16-546

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 106.

JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND ALBERT W. PRATT, COPARTNERS, AS PIERCE, SIMMONS & CO., PLAINTIFFS IN ERROR,

vs.

OLE A. INDSETH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 18, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 106.

JOSHUA C PIERCE, THOMAS K. SIMMONS, AND ALBERT W. PRATT, COPARTNERS, AS PIERCE, SIMMONS & CO., PLAINTIFFS IN ERROR,

VS.

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1 UNITED STATES OF AMERICA, *ss:*

To Ole A. Indsith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, wherein Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt are plaintiffs in error and you are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 17th day of June, 1879.

[SEAL.] R. R. NELSON, *Judge.*

2 (Indorsed:) B. 418, law. Circuit court U. S., dist. of Minnesota. Ole A. Indsith vs. Pierce, Simmons & Co. Citation filed Jun' 21, 1879, H. E. Mann, clerk.

Personal service of the within citation is hereby admitted on this 18th day of June, 1879, at St. Paul in the district of Minnesota.

E. C. PALMER,
J. C. MCCLURE,
Attorneys for Def't in Error.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Minnesota, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Ole A. Indseth, plaintiff, and Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt, copartners, as Pierce, Simmons & Co., defendants, a manifest error hath happened to the great damage of the said defendants, as is said: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[SEAL.] H. E. MANN,
Clerk of the Circuit Court of the United States of America, for the District of Minnesota.

4 UNITED STATES OF AMERICA,
District of Minnesota, ss:

The answer of the judges of the circuit court of the United States for the district of Minnesota, in the eighth circuit, in within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States of America, within mentioned, in a certain schedule to this writ annexed, marked Schedule A, as within it is commanded.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in the district of Minnesota, this 11th day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth year.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

(Indorsed:) B. 419, law. U. S. Supreme Court. Ole A. Indseth, def't in error, ads. Joshua C. Peerce et al., pl'ffs in error. Writ of error.

5 SCHEDULE A.

STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial district.

OLE A. INDSITH
against
JOSHUA C. PIERCE, THOS. H. SIMMONS, AND Albert W. Pratt, partners in business under the firm name and style of Pierce, Simmons & Co., defendants.

Complaint.

The complaint of the above-named plaintiff against the said defendants in the above-entitled action respectfully shows to this court:

I. That heretofore, to wit, on the thirty-first day of January, A. D. 1877, the said defendants were, ever since have been, and are now partners in business at the city of Red Wing, in said county of Goodhue and State of Minnesota, under the firm name and style of
6 Pierce, Simmons & Co. That the business of said firm during all of said time has been and still is that of bankers and dealers in foreign and inland bills of exchange.

II. And said plaintiff further says that heretofore, to wit, on the first day of February, A. D. 1877, at the said city of Red Wing, the said defendants, in consideration of the sum of four thousand four hundred and sixty-nine dollars and thirty-five cents to them therefor paid by said plaintiff, duly made, executed, and delivered to said plaintiff their certain bill of exchange in writing, bearing date on said day last aforesaid, and directed the same to the Christiania Bank og Knedit Kasse, at Christiania, Norway, and thereby directed and required the said Christiana Bank, at sight thereof, to pay to the order of said plaintiff the sum of fifteen thousand four hundred and forty-one and $\frac{50}{100}$ kroner. That within a reasonable time thereafter and in due course of business, to wit, on the twelfth day of April, A. D. 1877, the said plaintiff

7 duly presented said bill of exchange to the said Christiania Bank at Christiania, Norway, for acceptance and payment. That said Christiania Bank then and there declined and refused to accept or pay the same or any part thereof. That said plaintiff thereupon caused the said bill to be duly protested for non-acceptance, whereof the said defendants had due notice.

III. And said plaintiff further says that he is now the owner and holder of the said bill of exchange. That said sum therein mentioned and directed to be paid is the same amount in lawful money of the United States as said sum so paid said defendants therefor as aforesaid. That said defendants have not paid the same or any part thereof, but are now justly indebted to said plaintiff thereon in the sum of four thousand four hundred and sixty-nine dollars and thirty-five cents with interest thereon from and since the twelfth day of April, A. D. 1877, at the rate of seven per cent. per annum.

8 Wherefore said plaintiff demands judgment against said defendants herein for said sum and interest as aforesaid, together with his costs and disbursements herein.

Dated at Red Wing, Minnesota, this 19th day of September, A. D. 1877.

J. C. McCLURE,
Attorney for Plaintiff, Red Wing, Minnesota.

THE STATE OF MINNESOTA,
County of Goodhue, ss:

J. C. McClure came before me personally, and being duly sworn doth say that he is the said plaintiff's attorney in the above-entitled action; that the foregoing complaint is true to the best of his knowledge, information, and belief, and that the reason why this verification is not made by said plaintiff is that he is absent from the county of Goodhue, Minnesota, where resides this affiant, his said attorney.

J. C. McCLURE.

9 Subscribed and sworn to before me on this 19th day of September, A. D. 1877.

CHRISTIAN PHILLIPS,
Justice of the Peace, Goodhue County, Minnesota.

(Indorsed:) 656. District court, first judicial district, county of Goodhue. Ole A. Indsith, plaintiff, against Pierce, Simmons & Co., defendants. Complaint filed September 19th, 1877. Hans Jalmson, clerk. J. C. McClure, plaintiff's attorney, Red Wing, Goodhue County, Minnesota.

10 *Summons.*

STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial district.

OLE A. INDSITH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, partners in business under the firm-name and style of Pierce, Simmons & Co., defendants.

The State of Minnesota to the above-named defendants:

You and each of you are hereby summoned and required to answer

the complaint in this action, which said complaint is now on file with the clerk of said court, in his office, at the court-house, in the city of Red Wing, in said county and State of Minnesota, and to serve a
11 copy of your answer to the said complaint on the subscriber at his office, in the said city of Red Wing, in said county of Goodhue & State of Minnesota, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will, upon such failure, take judgment against you herein, for the sum of four thousand four hundred and sixty-nine dollars and thirty-five cents, with interest thereon from and since the twelfth day of April, A. D. 1877, at the rate of seven per cent. per annum, together with the costs and disbursements of said plaintiff herein.

Dated at Red Wing, Minnesota, this 19th day of September, A. D. 1877.

J. C. McCLURE,
Plaintiff's Attorney, Red Wing, Minnesota.

12 STATE OF MINNESOTA,
County of Goodhue, ss:

I do hereby certify that the within is a true copy of the original summons issued in the within-entitled action.

MARTIN S. CHANDLER,
Sheriff of Goodhue Co., Minnesota.

(Indorsed:) District court, county of Goodhue. Ole A. Indsith vs. Pierce, Simmons & Co. Summons. Filed December 11th, 1877. Hans Jalmson, clerk. J. C. McClure, plaintiff's attorney.

13 *Notice of appearance.*

STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial district.

OLE A. INDSITH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, partners in business under the firm-name and style of Pierce, Simmons & Co., defendants.

SIR: Please take notice that we are retained and appear as attorneys for the defendants above named, and each and all of them, in the above-entitled action, and ask a copy of the complaint therein.

Dated October 3rd, 1877.

WILLISTON & HALL,
Attorneys for Def't, Red Wing, Minnesota.

To J. C. McCLURE, Esq.,
Attorney for Plaintiff, Red Wing.

14 The time for answering in the within-entitled action is hereby extended to the 1st day of November, A. D. 1877.

J. C. McCLURE,
Plaintiff's Attorney.

(Indorsed:) District court, first district. Goodhue County. Ole A. Indsith against Joshua C. Pierce et al. Notice of appearance.

Due service of the within notice is hereby admitted, at Red Wing, Minnesota, on this 3rd day of October, A. D. 1877.

J. C. McCLURE,
Attorney for Plaintiff.

Filed December 11th, A. D. 1877. Hans Jalmson, clerk. Williston & Hall, attorneys for def'd'ts.

15 *Answer.*

STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial district.

OLE A. INDSITH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOMAS K. SIMMONS and Albert W. Pratt, partners in business under the firm-nameand style of Pierce, Simmons & Co., defendants.

Said defendants, for answer to the complaint of the plaintiff herein, deny that said plaintiff within a reasonable time after the delivery to him of said bill, presented the same to the drawee therein named, either for acceptance or payment thereof. On the contrary thereof, said defendants aver that said plaintiff before presenting the said bill
16 had and retained the same in his own possession without putting the same in circulation for an unreasonable length of time; and that said plaintiff did not, within a reasonable time after the delivery to him of said bill, present the same either for acceptance or payment thereof to the drawee therein named. Said defendants deny that said bill was in due course of business presented to the drawee therein named for either acceptance or payment. That as said defendants are informed and believe, the facts in relation to the presentment of said bill are as follows, to wit: That said plaintiff personally received said bill on or before the twenty-eighth day of February, 1877; that said plaintiff then resided within five miles of a certain town in Norway, Europe, known as Eidsvold, and so continued there to reside from the day last aforesaid to the twelfth day of April, 1877; that said plaintiff received said bill at said Eidsvold; that said Eidsvold was and is situ-
ate within fifty miles of said Christiania, in said Norway, the place
17 of business and residence of the drawee of said bill, and the place of the payment thereof. That at all times between said 28th day of February and said 12th day of April there was between said Eidsvold and said Christiania direct and continuous railroad communication, over and upon which road during all of said times mail and passenger trains ran twice each day each way to and from and between said Eidsvold and said Christiania. That upon any day between said 28th day of February and said 12th day of April, said plaintiff could have travelled and passed from his said residence to said Christiania within five hours' time. That at his said residence said plaintiff at all times from and between said twenty-eighth day of February and said twelfth day of April, 1877, had and retained said bill in his own posses-

sion, and did not in any manner negotiate it or put the same in circulation; and that said plaintiff did not present the said bill for acceptance or payment at any time before the 12th day of April, 1877.

18 Said defendants aver that they have not, nor has either of them, any knowledge or information sufficient to form a belief as to whether said bill was on the twelfth day of April, 1877, or at any other time, protested either as in said complaint alleged or otherwise.

Said defendants deny that they, or either of them, ever had any notice whatever of any presentment or demand, or non-acceptance, or non-payment, or protest of said bill, either as in said complaint alleged or in any other way or manner whatever.

Said defendants deny all and all manner of indebtedness to said plaintiff, either in manner, form, or amount as in said complaint alleged, or in any other way or manner, form, or amount whatever.

Wherefore said defendants demand judgment that this action be dismissed, and that they recover their costs and disbursements herein.

WILLISTON & HALL,
Att'ys for Defendants, Red Wing, Minnesota.

19 STATE OF MINNESOTA,
County of Goodhue, ss:

Albert W. Pratt came before me personally, and being duly sworn doth say that he is one of the defendants in the above-entitled action; that the foregoing answer is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters he believes it to be true.

ALBERT W. PRATT.

Subscribed and sworn to before me on this 29th day of October, A. D. 1877.

[SEAL.] W. H. PUTNAM,
Notary Public, Goodhue County, Minn.

20 (Indorsed:) District court, first judicial district, county of Goodhue. Ole A. Indsith against Joshua C. Pierce et al. Answer.

Due notice of a copy of the within answer is hereby admitted this 30th day of October, 1877.

J. C. McCLURE,
Pl'ff's Attorney.

Filed December 11th, 1877. Hans Jalmson, clerk. Williston & Hall, defendants' attorneys.

Notice of motion for removal of cause to the circuit court of U. S., district of Minnesota.

21 STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial district.

OLE A. INDSITH, PLAINTIFF,
against
JOSEPH C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, partners under the firm name and style of Pierce, Simmons & Co., defendants.

SIR: Please take notice that, at a general term of said court, ap-

pointed to be held within and for said county, at the court-house in the city of Red Wing, in said county, on the 11th day of December, 1877, at the opening of said court on that day, or as soon thereafter as counsel can be heard, a motion will be made by said defendants that the said above-entitled action be removed from said court to the
22 circuit court of the United States for the district of Minnesota.
That said motion will be made upon the petition and bond of said defendants. Copies of which are herewith served upon you.

Dated November 28th, 1877.

To J. C. McCLURE, Esq.,
Attorney for Plaintiff, Red Wing, Minnesota.

Yours, respectfully,

WILLISTON & HALL,
Att'ys for Defendant, Red Wing, Minnesota.

23 (Indorsed:) District court, Goodhue County, Minnesota. Ole A. Indsith vs. Joshua C. Pierce et al. Notice of motion for removal of cause to circuit court of United States, district of Minnesota.
Due service upon me of the within notice, and a copy of the petition and bond therein referred to, is hereby admitted this 28th day of November, A. D. 1877.

J. C. McCLURE,
Att'y for Plaintiff.

Filed December 13th, 1877. Hans Jalmson, clerk.

24 *Petition for removal to the circuit court of the United States for the district of Minnesota.*

STATE OF MINNESOTA,
County of Goodhue, ss:

District court, first judicial district.

OLE A. INDSITH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOMAS K. SIMMONS, and Albert W. Pratt, under the firm name and style of Pierce, Simmons & Co., defendants.

To the honorable the district court within and for the county of Goodhue, in the first judicial district of the State of Minnesota:

Your petitioners, the above-named defendants, Joshua C. Pierce, Thomas K. Simmons, & Albert W. Pratt, respectfully show to your honorable court—

That the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of the
25 State of Minnesota and a citizen, subject, and resident of a foreign state.

That said petitioners, Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt, and each and every of them, were, at the time of the commencement of this suit, and still are, citizens and residents of the State of Minnesota, and that said plaintiff, Ole A. Indsith, at the time

of the commencement of this suit was, and still is, a citizen, subject, and resident of the Kingdom of Sweden and Norway.

And your petitioners offer herewith a bond, with good and sufficient surety, for their entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioners pray your honorable court to proceed no
26 further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Minnesota; and thus they will ever pray.

JOSHUA C. PIERCE,
THOMAS K. SIMMONS,
ALBERT W. PRATT,
Petitioners,
By WILLISTON AND HALL,
Attorney' for Petitioners, Red Wing, Minnesota.

27 STATE OF MINNESOTA,
County of Goodhue, ss:

I, Albert W. Pratt, being duly sworn, on my said oath do say that I am one of the above-named petitioners, and one of the defendants in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

ALBERT W. PRATT.

Subscribed by said Albert W. Pratt, in my presence, and by him sworn to, before me, this 22nd day of November, A. D. 1877.

[SEAL.] CHAS. E. HINDS,
Notary Public, Goodhue County, Minnesota.

28 (Indorsed:) Minnesota district court, Goodhue County. Ole A. Indsith vs. Joshua C. Pierce et al. Petition for removal to the United States circuit court. Filed December 13th, 1877. Hans Jalmson, clerk. Williston and Hall, attorneys for petitioners.

29 Know all men by these presents that we, Joshua C. Pierce, Thos. K. Simmons, and Albert W. Pratt, as principals, and Eli T. Wilder and Ole K. Simmons, as sureties, all of the city of Red Wing, in the State of Minnesota, are held and firmly bound unto Ole A. Indsith in the penal sum of one thousand dollars, the payment whereof, well and truly to be made, unto the said Ole A. Indsmith, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Joshua C. Pierce, Thos. K. Simmons, and Albert W. Pratt having petitioned the district court within and for the county of Goodhue, in the first judicial district of the State of Minnesota, for the removal of a certain cause therein pending, wherein the above-named Ole A. Indsith is plaintiff and said Joshua C. Pierce, Thos. K. Simmons, and Albert W. Pratt, partners under the firm name and style of Pierce, Simmons & Co., are defendants, to the circuit
30 court of the United States in and for the district of Minnesota; now, if the said Joshua C. Pierce, Thos. K. Simmons, & Albert W.

Pratt, your petitioners, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise, in full force and virtue.

Witness our hands and seals this twenty-second day of November, A. D. 1877.

JOSHUA C. PIERCE. [SEAL.]
THOS. K. SIMMONS. [SEAL.]
ALBERT W. PRATT. [SEAL.]
OLE K. SIMMONS. [SEAL.]
ELI T. WILDER. [SEAL.]

Executed in presence of—
GEO. P. SJABLOM.
F. JASS.

STATE OF MINNESOTA,
County of Goodhue, ss:

Be it known that on this 22nd day of November, A. D. 1877, before me, personally came Joshua C. Pierce, Thos. K. Simmons, Albert
31 W. Pratt, Eli T. Wilder, and Ole K. Simmons, the signers and sealers of the foregoing instrument, and each for himself acknowledged the same to be his own free act and deed.

[SEAL.]

F. JASS,
Notary Public, Minnesota.

STATE OF MINNESOTA,
County of Goodhue, ss:

Eli T. Wilder and Ole K. Simmons, being duly sworn, each for himself doth depose and say that he is one of the sureties named in the foregoing bond, that he is a resident and freeholder of the State of Minnesota, and the owner of personal property therein; that he is worth the sum of one thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution; that he has property in the State of Minnesota liable to execution of the value of more than one thousand dollars.

OLE K. SIMMONS.
ELI T. WILDER.

32 Subscribed in my presence by the said Eli T. Wilder and Ole K. Simmons, and by them sworn to before me this 22nd day of November, A. D. 1877.

[SEAL.]

F. JASS,
Notary Public, Minnesota.

(Indorsed:) Minnesota, district court, Goodhue County. Ole A. Indsith vs. Joshua C. Pierce et al. Filed December 13th, 1877. Hans Jalmson, clerk. Williston and Hall, attorney's for petitioners.

33 *Order for removal to the circuit court of the United States for the district of Minnesota.*

STATE OF MINNESOTA,
County of Goodhue, ss:

District court, first judicial district.

OLE A. INDSITH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOS. K. SIMMONS, AND Albert W. Pratt, partners under the firm name and style of Pierce, Simmons & Co., defendants.

At a general term of said court, held within and for said county, on the 11th day of December, 1877, came said defendants by Williston & Hall, their attorneys, and presented to the court their petition for the removal of the said cause to the circuit court of the United States for the district of Minnesota, and said petitioners having with said petition offered a bond with good and sufficient surety for their entering in
34 said circuit court, on the first day of its next session, of a copy of the record in this action, and for paying all costs that may be awarded by the said circuit court if said court shall hold that this action was wrongfully or improperly removed thereto:

It is therefore ordered that the said petition and bond be, and the same hereby are, accepted, and that the said cause be, removed to the said circuit court of the United States for the district of Minnesota.

Dated December 11th, 1877.

By the court:

T. M. CROSBY,
District Judge.

(Indorsed:) District court, Goodhue County. Ole A. Indsith,
35 vs. Joshua C. Pierce et al. Order for removal to circuit court of the United States for the district of Minnesota. Filed December 13th, 1877. Hans Jalmson, clerk.

STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial dist.

OLE A. INDSITH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOS. K. SIMMONS, AND Albert W. Pratt, partners, under the firm name and style of Pierce, Simmons & Co., defendants.

36 COUNTY OF GOODHUE, *ss:*

I, Hans Jalmson, clerk of said court, do hereby certify that I have compared the foregoing with the original complaint, answer, notice of appearance, petition, bond, and order for removal to circuit court of the United States for the district of Minnesota, and a copy of

the summons in the above-entitled action on file in my office, and that the foregoing is a true and correct transcript therefrom and of the whole thereof.

{ DISTRICT COURT SEAL, GOODHUE CO., MINNESOTA. } Witness my hand and the seal of said court, at Red Wing, Minnesota, this 13th day of March, A. D. 1878.

HANS JALMSON, *Clerk.*

37 (Indorsed:) B. 419. law. District court, Goodhue County. Ole A. Indsith vs. Joshua C. Pierce et al. Filed June 17th, 1878. H. E. Mann, clerk, by James E. Wildey.

38 *Petition filed for transfer to circuit court of the U. S.*

District court, Goodhue County, State of Minnesota.

OLE A. INDSETH *vs.* PIERCE, SIMMONS & CO.

It is hereby stipulated by and between the respective attorneys of the parties to the above-entitled action that the plaintiff's attorney may serve an amended complaint in said action; that the defendants' attorneys shall have twenty days from receipt of such amended complaint to answer the same; that such amended complaint and answer thereto, or copies thereof, shall be filed with the certified copy of the record in said action, which is to be filed by the defendants' attorneys on the first day of the next term of said United States circuit court, and, with this stipulation or a copy thereof, shall form part of such record.

Further stipulated that this cause shall be continued over the next term of said United States circuit court.

Dated May 20th, 1878.

J. C. MCCLURE,
39 *Plaintiff's Attorney.*
WILLISTON AND HALL,
Defendants' Attorneys.

(Indorsed:) B. 419, law. District court, Goodhue County. Ole A. Indseth vs. Pierce, Simmons & Co. Stipulated as to amended complaint, answer, and continuance. Filed June 17th, 1878. H. E. Mann, clerk, by James E. Wildey.

40 STATE OF MINNESOTA,
County of Goodhue:

District court, first judicial district.

OLE A. INDSETH, PLAINTIFF, *against* JOSHUA C. PIERCE, THOS K. SIMMONS, & Albert W. Pratt, partners, under the firm name and style of Pierce, Simmons & Co., defendants. } Removed to United States circuit court.

Said plaintiff complains of said defendants, and alleges—

That heretofore, to wit, on the 31st day of January, A. D. 1877, the

said defendants were, since have been, and are now at Red Wing, in the county of Goodhue and State of Minnesota, copartners, under the firm name and style of Pierce, Simmons & Co., and engaged in the business of banking and dealing in foreign and inland bills of exchange.

41 That on or about the first day of February, A. D. 1877, at Red Wing aforesaid, the said defendants, in consideration of the sum of four thousand four hundred and seventy-nine dollars and seventy-three cents. ($4,479.73) to them therefor paid by said plaintiff, duly made, executed, and delivered to said plaintiff their certain bill of exchange, in writing, bearing date on said day last aforesaid, and directed the same to the Christiania Bank of Kredit Kasse, at Christiania, Norway, and thereby and therein directed the said Christiania Bank, at sight thereof, to pay to the order of said plaintiff the sum of fifteen thousand four hundred and forty-one and $\frac{50}{100}$ kroner. That within a reasonable time thereafter, and within the time required and fixed by the law of Norway in such cases, to wit, on the 12th day of April, A. D. 1877, said plaintiff duly presented the said bill of exchange to the said Christiania Bank, at Christiania, Norway, for acceptance and

42 payment, and then and there demanded payment of the said bill of exchange. That said Christiania Bank then and there declined and refused to accept or pay the sum, or any part thereof, and thereupon said plaintiff caused the said bill of exchange to be duly protested for non-acceptance, whereof said defendants had due notice.

Said plaintiff further says that the law of Norway and the rule and custom there existing in such cases permit and sanction the presentation of bills of exchange of the character herein set forth, at the place of payment therein named, at any time within six months next succeeding the drawing and delivery thereof, and that any such bill of exchange which is so presented for acceptance and payment within said period is by the law, rule, and custom aforesaid, deemed and taken by the law, rule, and custom aforesaid, as presented within a reasonable time, of all which said defendants had due notice and knowledge. Said plaintiff further alleges that said defendants were and are liable for

43 the contents of said bill of exchange, but have wholly refused to *to* pay the same, or any part thereof, or the exchange thereon, at the current rate, or any damage or interest upon the contents of said bill, though often thereto requested prior to the commencement of this action. That the current rate of exchange at the time of said demand for said sum was seventy-eight dollars and ninety-four cents.

Said plaintiff further says that he is the owner and holder of said bill of exchange; that the sum therein mentioned and directed to be paid is the same amount in lawful money of the United States as the sum so paid to said defendants therefor as aforesaid; and that said defendants are indebted to said plaintiff in the sum of four thousand four hundred and sixty-nine dollars and thirty-five cents, together with seventy-eight and $\frac{94}{100}$ dollars current rate of exchange and damages at the rate of ten per cent. upon the amount of said bill, and interest on the same from April 12, 1877, at seven per cent. per annum, for which amount, with exchange, damages, and interest, said plaintiff de-

44 mands payment against said defendants and for costs and disbursements of suit.

J. C. McCLURE,
Attorney for Plaintiff, Red Wing, Minnesota.

STATE OF MINNESOTA,
County of Goodhue, ss:

J. C. McClure came before me personally, and being duly sworn, doth say that he is the said plaintiff's attorney in the above-entitled action; that the foregoing complaint is true to the best of his knowledge, information, and belief, and that the reason why this verification is not made by said plaintiff in person is that plaintiff is now absent from the county of Goodhue, Minnesota, where resides this affiant, his said attorney.

J. C. McCLURE.

Subscribed and sworn to before me this 22nd day of April, A. D. 1878.

[SEAL.] F. W. HOYT,
United States Commissioner, District of Minnesota.

45 (Indorsed:) B. 419, law. District court, first judicial district, county of Goodhue. Removed to United States circuit court. Ole A. Indseth against Pierce, Simmons & Co. Amended complaint. Filed June 17th, 1878. H. E. Mann, clerk, by James E. Wildey. J. C. McClure, plaintiff's attorney, Red Wing, Minnesota.

46 *Answer to amended complaint.*

STATE OF MINNESOTA,
County of Goodhue, ss:

District court, first judicial district.

OLE A. INDSETH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOS. K. SIMMONS, & Albert W. Pratt, copartners as Pierce, Simmons & C'., defendants.
} Removed to circuit court of the United States.

And now come said defendants and for answer to the amended complaint herein deny that at the time or place or for the consideration in that regard in said complaint alleged said defendants made, executed, or delivered to said plaintiff the bill of exchange in said complaint described or any other bill of exchange whatever, except that at the time and place, and for the consideration in said complaint alleged, said defendants did make and deliver to said plaintiff a certain bill

47 of exchange, in the words and figures following, and no other or different bill whatever, to wit:

Exchange for 15,441 $\frac{50}{100}$ *kroner, per stamp* 2*c.*

PIERCE, SIMMONS & Co., BANKERS,
Red Wing, Minnesota, February 1, 1877.

At sight of this original of exchange (duplicate unpaid) pay to the order of O. A. Indseth fifteen thousand four hundred and forty-one $\frac{50}{100}$ kroner, value received and charge same to account of Sk. P. I. & Co., Chicago, as per advice from them.

PIERCE, SIMMONS & CO.

To CHRISTIANIA BANK OG KREDIT KASSE,
No. 2004.] *Christiania, Norway.*

Further answering, said defendants show to the court that at the time of the making of said bill, said plaintiff then resided at or near a certain town in said Norway, the country in which said bill was
48 payable, which town was and is known as Eidsvold; that said bill was, on the day of the date thereof, at said Red Wing, by said defendants then and there delivered to the agent of said plaintiff. That said agent immediately thereafter forwarded said bill to said plaintiff, and that, as said defendants are informed and believe, said plaintiff personally received said bill at said Eidsvold on or before the twenty-eighth day of February, 1877. Said defendants deny that said plaintiff, within a reasonable time after the receipt by him of the bill aforesaid, or within the time after such receipt by the laws of said Norway fixed for the presentment of said bill, presented the same to the drawee therein named for either acceptance or payment thereof. And they deny that said plaintiff, within a reasonable time after the receipt by him of said bill, or within the time after such receipt by the laws of said Norway in such case made and provided, demanded of said drawee payment of said bill. On the contrary thereof, said defendants aver that said plaintiff before presenting the said bill to
49 the drawee thereof for either acceptance or payment, had and retained the same in his own personal possession, without putting the same in circulation for an unreasonable length of time, and that said plaintiff did not, within a reasonable time, or within the time required or fixed by the laws of said Norway in such case made and provided, after the delivery to him of said bill, present the same to the drawee thereof for either acceptance or payment thereof.

Said defendants deny that said bill was duly or in due course of business presented to the drawee therein named either for acceptance or payment thereof.

Said defendants upon information and belief deny that at the time in that regard in said complaint alleged, or at any other time, there was any law, rule, or custom existing in said Norway which permitted or sanctioned the presentation of bills of exchange of the character of the bill above set forth at the place of payment therein named at any time within six months next succeeding the drawing thereof;
50 and they deny that any law, rule, or custom existed or exists in said Norway concerning the presentation of such bills of exchange which is in any manner different from the law, rule, and custom governing the presentation of such bills in the State of Minnesota. And they deny that under any law, rule, or custom of said Norway the presentation for acceptance or payment of bills of exchange of the character of the bill above set forth at any time within the period of six months next succeeding the drawing and delivery thereof is deemed or taken to be a presentation of such bill within a reasonable time. And said defendants deny that they, or either of them, have, or ever had, any notice or knowledge of any such alleged law, rule, or custom as in that regard in said amended complaint alleged.

And said defendants upon information and belief deny each and every allegation in said amended complaint contained concerning said pretended law, rule, or custom of said Norway.

51 Further answering, said defendants show to the court that they are informed and believe, and upon such information and belief allege that the facts in reference to the presentation of the bill above

set forth are as follows, and not otherwise, to wit: That said plaintiff personally received said bill on or before the twenty-eighth day of February, A. D. 1877, at Eidsvold aforesaid. That said plaintiff then resided within five miles of said Eidsvold, and so continued there to reside from the day last aforesaid to the twelfth day of April, 1877. That said Eidsvold was and is situated within fifty miles of said Christiania, in said Norway, the place of business and residence of the drawee in said bill named, and the place of payment of said bill. That at all times between said 28th day of February and said 12th day of April there was between said Eidsvold and said Christiania direct and continuous railroad communication, over and upon which railroad during
52 all of said time mail and passenger trains ran twice each day each way to and from and between said Eidsvold and said Christiania. That upon any day between the said 28th day of February and said 12th day of April said plaintiff could have travelled and passed from his said residence to said Christiania within five hours' time; and could at any time between said days have communicated daily with said Christiania by mail, and could upon any day between the days aforesaid have presented said bill to the drawee therein named. That at his said residence said plaintiff at all times from and between said 28th day of February and said 12th day of April, 1877, had and retained said bill in his own possession, and did not in any manner negotiate or put the same in circulation; and that said plaintiff did not present the said bill for acceptance or payment at any time before the 12th day of April, 1877.

Said defendants aver that they have not, nor has either of them, any knowledge or information sufficient to form a belief as to whether
53 said bill was on the 12th day of April, 1877, or at any other time, protested, either as in said amended complaint alleged or otherwise.

Said defendants deny that they, or either of them, ever had any knowledge or notice whatever of any presentment, or demand, or non-acceptance, or non payment, or protest of said bill either as in said complaint alleged, or in any other way or manner whatever.

Further answering said defendants shew to the court that at all times after the drawing of said bill, funds were on deposit with, and in the hands of the drawee thereof for the specific purpose of, and applicable to, the payment of said bill.

Said defendants deny that at the time in that regard in said amended complaint alleged, the current rate of exchange for the amount of said bill was the sum of seventy-eight dollars and ninety-four cents, or any other sum exceeding the sum of twenty dollars.

Said defendants deny all and all manner of indebtedness to said
54 plaintiff either in manner, form, or amount whatever.

Wherefore said defendants demand judgment that this action be dismissed, and that they recover their costs and disbursements therein.

Dated May 27, 1878.

WILLISTON & HALL,
Att'ys for Defendants, Red Wing Minnesota.

STATE OF MINNESOTA,
County of Goodhue, ss:

A. W. Pratt came before me personally, and being duly sworn, doth say, that he is one of the members of the firm of Pierce, Simmons & Co., the defendants in the above-entitled action; that the foregoing answer

is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters he believes it to be true.

A. W. PRATT.

Subscribed and sworn to before me on this 27th day of May, A. D. 1878.

F. W. HOYT,

55 *United States Commissioner, District of Minnesota.*

(Indorsed:) B. 419, law. District court, first judicial district, county of Goodhue. Verification by party. Ole A. Indseth against Joshua C. Pierce et al. Answer.

Due service of a copy of the within answer is hereby admitted this 27th day of May, 1878.

J. C. McCLURE,
Plaintiff's Attorney.

Filed June 17th, 1878. H. E. Mann, clerk, by James E Wildey. Williston & Hall, defendants' attorneys.

56 In the circuit court of the United States, for the district of Minnesota.

OLE A. INDSETH, PLAINTIFF,
against
JOSHUA C. PIERCE, THOMAS K. SIMMONS, and Albert W. Pratt, copartners, &c., defendants.

Stipulation.

In this action it is hereby stipulated and agreed by and between the parties thereto, that the issue herein be submitted to and tried by the court, without the intervention of a jury, and that a jury trial herein be, and the same is hereby, waived.

Dated Red Wing, Minnesota, December 11th, 1878.

J. C. McCLURE,
Attorney for Pl'tiff.
WILLISTON AND HALL,
Att'ys for Defendants.

57 (Indorsed:) B. 419, law. Circuit court U. S., district of Minnesota. Ole A. Indseth vs. Joshua C. Pierce et al. Stipulation waiving jury trial. Filed December 12th, 1878. H. E. Mann, clerk. J. C. McClure, plff's attorney. Williston & Hall, d'f't's att'ys.

58 United States circuit court for the district of Minnesota.

Term minutes. December term, A. D. 1878.

MARCH 18, 1879.

Present, Hon. Rensselaer M. Nelson, judge.

OLE A. INDSETH
vs.
JOSHUA C. PIERCE, ET AL.

This cause came on to be heard before the court without a jury,

a jury trial having been waived by stipulation of the parties in writing on file. E. C. Palmer and J. C. McClure, esquires, appeared for the plaintiff, and Charles E. Flandrau, esq., appeared for the defendants, with W. C. Williston, esq. E. C. Palmer, esq., opens the case for the plaintiff.

Anthon S. Broxrud is sworn & examined as a witness for plaintiff.

Plaintiff introduces documentary evidence and rests his case.

Charles E. Flandrau, esq., opens the case for defendants and
59 moves to dismiss, which motion, after argument, is denied.

Richard Bradley is sworn and examined as a witness for defendants.

And here the defendants rest their case after introducing written testimony.

C. H. Broxrud, sworn and examined as a witness for plaintiff in rebuttal.

Charles E. Flandrau, esq., sums up for the defendants.

United States circuit court for the district of Minnesota.

Term minutes. December term, A. D. 1878.

MARCH 19, 1879.

Present, Hon. Rensselaer M. Nelson, judge.

OLE A. INDSETH
vs.
JOSHUA C. PIERCE ET AL.

This cause coming on to be further heard, the parties appeared by their respective attorneys. E. C. Palmer, esq., sums up the case for the plaintiff, and it is submitted and by the court taken under advisement.

60 *The opinion.*

OLE A. INDSETH
vs.
JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, partners, as Pierce, Simmons & Co.

Action by holder of foreign bill of exchange to recover against drawer.

Tried *to* the court without a jury.

J. C. McClure, and Palmer and Bell, for plaintiff.

Williston and Hall, and Bigelow, Flandrau, and Clark, for defendants.

I find the following facts:

I. Pierce, Simmons & Co., bankers at Red Wing, on February 1, 1877, for value received, sold to the agent of the plaintiff a foreign bill of exchange of that date in the words following, viz:

J. C. PIERCE. T. K. SIMMONS. A. W. PRATT.

PIERCE, SIMMONS & CO., BANKERS,
Red Wing, Minn., Feb. 1, 1877.

Exchange for 15,441.50 kr.

At sight of this original of exchange (duplicate unpaid) pay to the order of O. A. Indseth fifteen thousand four hundred and forty-
61 one $\frac{50}{100}$ kroner, value received, and charge same to account of Sk. P. I. & Co., Chicago, as per advice from them.

PIERCE, SIMMONS & CO.

To CHRISTIANIA BANK OF KREDIT KASSE,
No. 2004.] *Christiania, Norway.*

II. I find that the plaintiff's agent sent the draft to the payee, which was received by him in Norway, at his residence in Eidsvold, about fifty miles from Christiania, the place of business of the drawee, on February 27, 1877, and was presented for payment on April 12, 1877, and payment was then and there refused; and the plaintiff, the payee, caused the bill of exchange to be protested by a notary, which was done, and protest duly certified and authenticated in the manner, form, and words, as follows:

1537.

No. 3. | Coat of arms stamp. | One crown —(26 2–5 cents).

62

Schoyen. | For an amount of over 100 kr. & not over 150 kr.

1877.

Notary public in Christiania makes hereby known in the year 1877,
Falk Yttor. April 12, there was delivered to me from Mr. O. A. Indseth, by Anthony B. Jerke, a bill of exchange reading as follows:

Exchange for 15,441$\frac{50}{100}$ kroner.

RED WING, MINNESOTA, *February 1st*, 1877.

At sight of this original of exchange (duplicate unpaid) pay to the order of O. A. Indseth fifteen thousand four hundred and forty-one $\frac{50}{100}$ kroner, value received, and charge the same to the account of Sk. P. I. & Co., Chicago, as per advice from them.

PIERCE, SIMMONS & CO.

To CHRISTIANIA BANK OF KREDIT KRASSE,
Christiania, Norway.

With the request that the bill of exchange "de non salutione" might be protested.

63 In accordance with this request, and as there was answered in Christiania Bank of Kredit Kasse that the firm in question had failed, protest was entered on the same day by me, and in presence of P. Eide, as witness, as it is hereby protested in optima forma de non

salutione, besides which the right of the owner of the bill of exchange to demand and receive from all concerned full restitution for exchange, interest, commission, and all other costs, loss, and damage already caused by such non-payment is reserved in accordance with the statutes and laws concerning bills of exchange.

In witness of this this protest of the bill of exchange is issued under my hand and official seal.

[NOTARIAL SEAL.] N. L. JURGENSEN.

Paid 9 kr., nine kroner.

N. L. JURGENSEN.

III. I find the defendants were notified that payment had been refused by letter to the firm from the plaintiff, the payee, which letter was received by them at Red Wing aforesaid at least as early as May 15, 1877, and also by the original certificate of protest, and a translation shown Pratt, one of the defendants, about that date by the plaintiff's agent, to whom the process was sent for that purpose.

64

IV. I find the time required to communicate by mail between the residence of the plaintiff in the Kingdom of Norway and Red Wing, Minnesota, the residence and place of business of defendants, the drawers of the bill of exchange, is between twenty and thirty days.

V. I find the two letters, copies of which are here given, were written and mailed to the plaintiff by the defendants on the days they bear date, and were received by the plaintiff in Norway on the 13th and 15th of March respectively:

(Copies.)

[Pierce, Simmons & Co., bankers, foreign exchange and passage tickets.]

RED WING, MINN., *Feb.* 13, 1877.

DEAR INDSETH: We are very much annoyed by learning that our notice of your last large draft was not received by our friends, and consequently not advised to Christiania B'k, as we fear it will cause you trouble.

65

We bought gold at best rates and gave draft to Boxrud same day. Still it will all be correct soon.

Hastily yours,

PRATT.

We hope you will not be worried.

[Pierce, Simmons & Co., bankers, foreign exchange and passage tickets.]

RED WING, MINN., *Feb'y* 15, 1877.

DEAR FRIEND INDSETH: Fearing that our last large draft might not be paid, owing to loss of our advice, we to-day cause a cable dispatch to be sent to Christiania directing payment, so you will be put to no expense or trouble. Your kind favor of Jan. 15 rec'd. We telegraphed and bought gold at best rate for you, and hope you will be satisfied with our action and rates. Business very dull—never saw it so at this season. Warm and pleasant here now.

66

Yours truly,

PIERCE, SIMMONS & CO.

VI. I find the defendants had no money to their credit with the

Christiania Bank in Norway when the bill of exchange was drawn, and depended for its acceptance and payment by the drawee upon the advice of Skow, Peterson, Isberg and Co., bankers, of Chicago, to the Christiania Bank to pay the same.

VII. I find the firm of Skow, Peterson, Isberg & Co., of Chicago, failed and made an assignment on March 21st, 1877, and from February 28th to March 21st, 1877, inclusive, had to their credit with Christiania Bank money enough to meet this draft, but that no portion of the same had been set apart by the Christiania Bank to meet this particular bill of exchange, and the assignee of Skow, Peterson, Isberg & Co. has received from the Christiania Bank all moneys in its hands belonging to this firm.

67 VIII. I find the deposition of C. B. Bonnevie, a citizen of the Kingdom of Norway, and a lawyer of seven years' practice at the supreme court, superior court, and lower courts of the kingdom, was taken in the kingdom, and he testifies that he is "familiar with the laws and rules relating to bills of exchange valid in the Kingdom of Norway," and that "the Norwegian law of August 20, 1842, relating to bills of exchange, enacts in its paragraph 'one,' that bills of exchange may be drawn with so long respite that they will fall due in Europe at the latest twelve months from their issue. Relating to sight drafts it is enacted in the paragraph 'two,' that they shall be presented for acceptance so early that their time of payment falls within the time prescribed in the paragraph 'one.' The provisions of the paragraph "one" of the said law do evidently refer only to bills of exchange drawn within this country. The paragraph 'two' refers exclusively to aviso bills, as it is not required in that country that

68 sight drafts be presented for acceptance. * * *

"* * * The laws of Norway do not establish any special rule concerning bills of exchange drawn in America and payable in Norway. The drawer of a bill whose liability is to be judged of under the Norwegian law will be exempt from any liability incident to the bill of exchange if the bill was not presented within a year from its issue; provided, however, he can prove that owing to the delayed presentation he suffered a loss in his accounts with the drawee. If he cannot prove that, he is liable as if having only signed a simple bond.

"Our laws establish no rule concerning presentation of bills within a reasonable time."

IX. I find the law of Minnesota, sec. 53, title 7, pg. 526, enacts, "the existence and the tenor or effect of all foreign laws may be proved as facts by parol evidence, but if it appears that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law that is not accompanied by a copy thereof."

69 CONCLUSIONS OF LAW.

I. The protest purporting to be sealed and the impression affixed to the notary's name, declared to be his seal, are sufficient, and upon general principles of commercial policy are accredited. (2 Peters, 179; 8 Wheaton, 326, 333; 1 Bald., 91; Philips on Evidence, page 1277, vol. 3, note 884; do., page 1053, note 704; do., page 1259; 3 Kent, page 93, note B; Byles on Bills, page 146; 20 Wend. R., 85, as to seal; 13 Howard, 473; Greenleaf on Ev., page 6; Chitty on Bills, page 215.)

II. The statute of the State of Minnesota is a rule of evidence which

this court will apply, and although the written foreign law may be proved by a copy properly authenticated, it is not requisite that all foreign written law must be so proved. (Taylor on Ev., 1231; Best on Ev., 31, 652; Powell on Ev., 302; 99 Mass., 253; 14 Mass., 455; 14 Howard, 426; and authorities cited.)

III. The presentment for payment to the Christiania Bank in Norway was in time to hold the drawer liable on the refusal to pay,
70 and the notice to drawers of such refusal to pay and protest was legal and sufficient. (4 Howard, page 245, and authorities cited.)

IV. The plaintiff is entitled to judgment for the amount of the principal of bill of exchange in dollars, $4,469.35, and interest thereon from April 12, 1877, at the rate of seven per cent. per annum, to wit, $616.14; on all, principal and interest, $5,085.49, with costs.

R. R. NELSON, *Judge.*

(Indorsed:) United States circuit court, district of Minnesota. O. A. Indseth vs. Pierce, Simmons & Co. Decision. Nelson, J.

71 United States circuit court for the district of Minnesota.

Term minutes. December term, A. D. 1878.

MARCH 31, 1879.

Present, Hon. Rensselaer R. Nelson, judge.

OLE A. INDSETH
vs.
JOSHUA C. PIERCE ET AL.

This cause having been tried before the court without a jury and submitted, and by the court taken under advisement, now the court, being fully advised in the premises, files its opinion and findings in writing, and, pursuant thereto, it is ordered that judgment in favor of the plaintiff and against the defendants be entered in this action for the sum of $5,085.49, with costs. On application of the defendants, it is further ordered that all further proceedings herein be stayed for the period of twenty days.

72 Circuit court of the United States for the district of Minnesota.

OLE A. INDSETH
vs.
JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, copartners, as Pierce, Simmons & Co.

Bill of exceptions.

This case was brought on for trial at the December term of this court on the 18th day of March, 1879, before Hon. R. R. Nelson, judge, without a jury, a jury having been previously duly waived.

The plaintiff, to support the issues on his part, offered to read in evidence a copy of the bill of exchange sued upon, together with a copy of the certificate of protest of the same, translated by the parties referred to in the stipulation below, appearing under a stipulation

which had been entered into between the parties to the action, which stipulation is in the words and figures following:

73 [Title of the cause.]

Stipulation.

Whereas in this action it is necessary that the bill of exchange in the complaint herein set forth be without delay presented to E. G. Mason, the assignee of Skow, Peterson, Isberg & Co., at his office in the city of Chicago, in the State of Illinois, for the purpose of receiving, by the party entitled thereto, of any dividend that may be declared out of the estate of said Skow, Peterson, Isberg & Co. by said assignees: Now, it is hereby stipulated and agreed by and between the parties to said action that said bill be, by the said Pierce, Simmons & Co., forwarded to said assignee; that if, pending the final determination of this action, any dividend be declared by said assignee out of said estate, that the amount of such dividend declared upon said bill be by said assignee deposited with the First National Bank of Red Wing, in Red Wing, Minnesota, to abide such determination, and that upon
74 such determination the amount of such deposit be paid to the losing party in this action; that a copy of such bill and of the protest thereof (the latter to be translated by said T. K. Simmons and Christian Boxrud, of said Red Wing) be received in evidence upon the trial of this action in all respects as would said original bill and the protest thereof if offered in evidence.

Dated Red Wing, Minnesota, October 22nd, 1877.

J. C. McCLURE,
Att'y for Plaintiff.
WILLISTON & HALL,
Att'ys for Defendants.

The defendanst' attorneys produced and read to the court a notice which they had served upon the plaintiff's counsel in the following words:

[Title of the cause.]

To Messrs. J. C. McCLURE and E. C. PALMER,
Plaintiff's Attorneys:

75 GENTLEMEN: We call your attention to a stipulation which was entered into between the attorneys for the respective parties to this action, on the 22nd of October, 1877, wherein for certain reasons stated in said stipulation it was agreed "that a copy of such bill (meaning the bill of exchange on which this action is founded), and of the protest thereof (the latter to be translated by said T. K. Simmons and Christian Boxrud, of said Red Wing) be received in evidence on the trial of this action, in all respects as would said original bill, and the protest thereof, if offered in evidence," and give you notice that as the reasons expressed in said stipulation why copies of said bill and protest should be used in evidence have never become operative as to the original instrument of protest of said bill, and as the same is in our hands and ready to be produced on the trial of said action, we shall insist upon the original instrument being used as evidence, and not a

copy thereof, and that we revoke the said stipulation so far as
76 the same applies to said instrument of protest.

Yours, truly,

WILLISTON & HALL,
BIGELOW, FLANDRAU, & CLARK,
Def'd'ts' Attorneys.

Due service of which notice was admitted on the back thereof by pl'ff's attorneys on the 12th day of March, 1879.

And thereupon counsel for the defendants produced in court the said original instrument of protest and tendered it to the plaintiff's counsel to use in evidence, and objected to a copy thereof being received in evidence, on the ground that the same was incompetent, and that the original being in court, the defendants were relieved from their stipulation.

The court overruled the objection, and allowed the counsel for the plaintiff to read in evidence a copy of the said instrument of protest, and translation thereof, which were then and there read in evidence by the plaintiff's counsel, and are hereto annexed, marked Exhibit A.

To which ruling and decision the defendants' counsel duly excepted.

77 The counsel for the plaintiff then read in evidence a deposition of the plaintiff, Ole A. Indseth, taken under stipulation, upon interrogatories and cross-interrogatories, and filed in said cause, November 2, 1878, a copy of which stipulation is hereto attached, which tended to prove the following facts: That on the first day of February, 1877, he resided at Langset, in Norway, Europe, about fifty English miles distant from Christiania; that he first received the draft or bill of exchange in suit on the 27th day of February, 1877, at Langset. On the 13th of March, 1877, he received the following letter from Mr. Pratt, one of the defendants, relating to the draft in suit:

RED WING, *February* 13, 1877.

DEAR INDSETH: We are very much annoyed by learning that our notice of your last large draft was not received by our friends, and consequently not advised to Christiania b'k, as we fear it will cause you trouble.

78 We bought gold at best rates, and draft to Broxreed same day. It will be all correct soon.

Hastily, yours,

PRATT.

We hope you will not be worried.

In relation to this letter he testified as follows: "If I had not received Mr. Pratt's letter of the 13th day of February, 1877, I would have gone that same week to Christiania to present the draft or bill of exchange to the Christiania Bank og Kredit Kasse for payment."

That on the 20th day of March, 1877, he received another letter from Mr. Pratt, one of the defendants, dated the 15th day of February, 1877, relative to the bill in suit, which letter is as follows:

RED WING, MINN., *Feb'y* 15, 1877.

DEAR FRIEND INDSETH: Fearing that our last large draft might not be paid, owing to the loss of our advice, we to-day cause a cable dispatch to be sent to Christiania directing payment, so you will
79 be put to no trouble or expense.

Your kind favor of Jan. 15 received. We telegraphed and bought gold at best rates for you, and hope you will be satisfied with our action and rates. Business very dull. Never saw it so at this season. Warm and pleasant here now.

Yours, truly,

PIERCE, SIMMONS & CO.

Counsel for plaintiff then proposed to read the 8th direct interrogatory of said deposition, which is in the words following:

"State whether or not you presented the said draft or bill to the Christiania Bank og Kredit Kasse, at Christiania, in said Norway, for acceptance. If yes, when, and was it accepted by the said bank?"

The defendants' counsel objected to the interrogatory, on the grounds that it was incompetent, irrelevant, and immaterial, and that such facts can only be proven by the certificate of the notary making the protest.

80 The court overruled the objection, and allowed the answer to be read in evidence. To which ruling and decision the counsel for the defendants duly excepted.

And the answer to said interrogatory was then read in evidence as follows:

"On the 12th day of April, 1877, I presented said draft or bill of exchange to the Christiania Bank og Kredit Kasse, at Christiania, in said Norway, for acceptance, and it was not accepted by said bank."

The plaintiff further testified that he had never been paid the amount of said draft or bill in suit, or any part of it.

And on cross-examination, he testified that at the time he received the bill of exchange in suit, he resided seven English miles from the town of Eidsvold, in Norway, Europe, and that he continued to so reside there until the 10th day of April, 1877, and at the time he received said bill two railroad trains ran daily between Christiania and Eidsvold each way, and that there was a daily mail communication between said places, and that said mail communication continued

81 during all the time said bill was in his possession.

The plaintiff's counsel then read in evidence the deposition of A. G. BONNEVIE, which was taken on the part of the plaintiff, at Christiania, in Norway, under the objections and exceptions of the defendants' counsel, then and there made, which appear below, which was as follows:

Ques. 1st. What is your name, age, profession, and where do you reside?

Ans. My name is August Christian Baumann Bonnevie; I am 32 years old; an advocate in the supreme court; I reside at Christiania.

Ques. 2. If you answer that you are an advocate by profession, state how long you have been in the profession, in what courts, and where you have practised, and if you have, during such time, been engaged in the general practice of the law.

Ans. I have been engaged in the profession for seven years and a half. I have practised at the supreme court as well as at the superior and lower courts of Christiania, having been engaged in the general practice of the law.

Ques. 3. Are you familiar with the laws, rules, and customs of

82 the Kingdom of Norway with reference to the drawing, presentment for acceptance and payment of sight drafts or bills of exchange?

Ans. I am familiar with the laws and rules relating to bills of exchange valid in the Kingdom of Norway.

Ques. 4. If you answer the last interrogatory in the affirmative, state what, if any, law, rule, or custom there is in said Norway relative to the time within which a sight draft or bill of exchange must be presented to the drawee for acceptance, when such draft or bill of exchange is issued in a foreign country, and is payable in and to a resident of said Norway.

(To this interrogatory the defendants' counsel objected, on the ground that it is incompetent, irrelevant, and immaterial, and that if the law sought to be proven is a written or statute law it can only be proven by a copy of such law properly sworn or authenticated, or the absence of such copy accounted for.

The court overruled the objection, and the answer was read in evidence.

To which ruling and decision the counsel for the defendant duly excepted.)

83 Ans. The Norwegian law of Aug. 20, 1842, relating to bills of exchange, enacts in its paragraph 1, "That bills of exchange may be drawn with so long respite that they fall due in Europe at the latest six months from their issue, and out of Europe at the latest twelve months from their issue." Relating to sight drafts, it is enacted in the paragraph 2, "that they shall be presented for acceptance so early that their time of payment falls within the time prescribed in the paragraph 1. The provisions of the paragraph 1 of the said law do evidently refer only to bills of exchange drawn within this country." The paragraph 2 refers exclusively to avise-bills, as it is not required in this country that sight drafts be presented for acceptance. In the Norwegian laws there is consequently no direct rule applicable to the case mentioned in this interrogatory; but by following the analogy of the provisions above quoted, the presentation of a sight bill within the time mentioned in the law of 1842 will doubtless suffice to maintain the privilege accorded to the bearer of a bill of exchange, if the case
84 should be decided upon by a Norwegian court.

Ques. 6. How long would the payee named in a draft or bill of exchange of the tenor and effect following, viz:

(Here follows copy draft in suit.)

have, under the laws, customs, and rules of the said Kingdom of Norway, in which to present the same to the drawee named therein for acceptance, in order to charge the drawer thereof in case of non-acceptance?

(To this interrogatory the counsel for the defendants objected, on the ground that the same was incompetent, irrelevant, and immaterial. That it appears that the only law on the subject of bills of exchange in the Kingdom of Norway is a statute law, and should be proven by copy duly authenticated or sworn to, or the absence of such copy accounted for, and that it also appears that there is no custom existing in the said Norway concerning the time of presentation of sight bills.

The court overruled the objections, and the answer of the witness was read to the court in evidence.

85 To which ruling and decision the counsel for the defendants duly excepted.)

Ans. As already stated in the answer to the interrogatory 4, the presentation of a bill within the time therein quoted will suffice to maintain the priveleges of a bill of exchange towards any person whose name is written on the bill, provided his liability is to be judged under the rules of the Norwegian law relating to the presentation of bills. It may, of course, be left to the American courts to decide whether the liability of the drawer shall be judged according to the American or the Norwegian

laws. Does his liability depend on the fact whether the Norwegian rule relating to presentation of bills has been complied with, then he must be held liable (bound to pay), provided the bill was presented within a year from its issue.

Ques. 7. Upon a draft or bill of exchange of the form above given in the 6th interrogatory, what would be a reasonable time for presentation for acceptance under said laws, rules, and customs of said Kingdom of Norway?

(To the said interrogatory the counsel for the defendant ob-
86 jected on the grounds that the same was incompetent, irrelevant, and immaterial, together with additional objections made to the last interrogatory, and the further objection that it appears that there are no laws or customs relating to or governing the time of the presentation of sight drafts for acceptance or payment in said Norway.

The court overruled the objections, and the answer to the question was read in evidence.

To which ruling and decision the counsel for the defendants duly excepted).

Ans. Our laws establish no rule concerning presentation of bills within "a reasonable time;" nor do I think that there exists in this country any legal practice in this respect.

To this deposition there were cross-interrogatories and their answers, the first two of which the defendants' counsel read to the court, and then declined to offer any more of them in evidence.

The two cross-interrogatories read by the defendants' counsel were as follows:

First cross-interrogatory. Under the laws and commercial customs of Norway, would not the payee of a sight bill of exchange
87 drawn in America upon and payable at a bank in Christiania, Norway, who, after receiving such bill in Norway should for six weeks thereafter retain the same in his own possession without in any manner negotiating or putting the same in circulation or presenting it for acceptance, the payee during all that time residing and being within eight (8) miles of said Christiania, and there being during all of said time daily railroad and mail communication between such place of residence and said Christiania, be deemed to have been guilty of such negligence in presenting such bill for acceptance or payment, as in case of non-acceptance or non-payment thereof to discharge the drawer from his liability thereon?

Ans. I refer to my answer of the fourth direct interrogatory.

Second cross-interrogatory. Do not the laws and commercial customs of Norway prescribe that a sight bill of exchange, drawn in America upon and payable at a bank in Norway, must, in order to charge
88 the drawer in case of non-acceptance, be presented to the drawee for acceptance within a reasonable time after its receipt by the payee?

Ans. No.

Whereupon the counsel for the plaintiff offered therein evidence under the objections and exceptions of the defendant's counsel, as appears below.

Third cross-interrogatory. Under the laws and commercial customs of Norway, would not the payee of a sight bill of exchange, drawn in America upon and payable at a bank in Christiania, Norway, who, after receiving such bill in Norway, should for six weeks thereafter retain the same in his own possession without in any manner negotiating or putting the same in circulation, or presenting it for acceptance, the

payee, during all that time, residing and being within eight (8) miles of said Christiania, and there being, during all of said time, daily railroad and mail communication between such place of residence and said Christiania, be deemed to have been guilty of such negligence in presenting such bill for acceptance or payment, as in case of non-acceptance
89 or non-payment thereof, to discharge the drawer from his liability thereon?

(To this interrogatory the counsel for the defendants objected, on the ground that it is incompetent, irrelevant, and immaterial, and that the defendants' counsel having declined to cross-examine the witness further, the plaintiffs had no right to cross-examine him.

The court overruled the objection, and the counsel for the defendants duly excepted to such ruling and decision, and the answer was read in evidence.)

Ans. If the liability of the drawer is to judged under the Norwegian laws, the payee will maintain his full right against the drawer under the circumstances mentioned in this interrogatory, provided he presented the bill within the time fixed by the law, as stated in my answer to the interrogatory No. 4.

Fourth cross-interrogatory. In case of a bill, such as that mentioned in the third cross-interrogatory, if funds had been deposited with
90 the drawee by the person for whose account the bill was drawn, for the payment of the bill, and the bill would, if it had been presented for acceptance or payment by the payee at any time within four weeks after its receipt by him, have been paid by the drawee upon presentation, and after the expiration of said four weeks, by reason of the failure of the persons depositing such funds, the drawee of such bill, upon presentation, refused to accept or pay such bill, and by reason of such failure and the subsequent insolvency of the person depositing such funds, the drawee of the bill is remediless, would not the drawer of such bill, under the laws and commercial customs of Norway, be discharged from his liability thereon, the residence of the payee and the place of payment of the bill, and the means of communication between the two places being as stated in said third cross-interrogatory?

(The counsel for the defendants objected to the question, on the same grounds urged against the question immediately preceding.
91 The court overruled the objections, and the answer was read in evidence.

To which ruling and decision the counsel for the defendants duly execpted.)

Ans. Under the Norwegian laws the facts put forth in this interrogatory would have no influence to discharge the drawer from his liability.

Plaintiff's counsel then offered the 5th cross-interrogatory, with its answer, as follows:

5 cross-interrogatory. Do not the laws and commercial customs of Norway prescribe that a sight bill of exchange drawn in America, upon and payable at a bank in Norway, be not presented by the holder for either acceptance or payment within one year from the date of the bill; that in such case the drawer is discharged from all liability as such on the bill; but if presented within one year from its date, and acceptance or payment be refused, that in such case the liability of the drawer depends upon whether the bill was or was not presented within a reasonable time after its receipt by the payee, and does not the
92 answer to the question whether such bill was presented in a

reasonable time depend in each case upon the facts and circumstances surrounding that case?

(The defendants' counsel objected to this interrogatory, on the same grounds urged against the last two cross-interrogatories offered by plaintiff's counsel.

The court overruled the objections, and the answer was read in evidence.

To which ruling and decision of the court the counsel for the defendants duly excepted.)

Ans. As above stated, the laws of Norway do not establish any special rule concerning bills of exchange drawn in America and payable in Norway. The drawer of a bill whose liability is to be judged under the Norwegian law will be exempt from any liability incident to the bill of exchange, if the bill was not presented within a year from its issue, provided, however, he can prove that owing to the delay in presentation he suffered a loss in his accounts with the payee (drawee).

If he cannot prove that, he is liable as if only having signed a
93 simple bond.

Plaintiff's counsel then offered in evidence the sixth cross-interrogatory and the answer thereto, which is as follows:

6th cross-interrogatory. Upon a bill of exchange, such as is mentioned in the sixth direct interrogatory, the payee residing and being, and the place of payment and the means of communication between the two places being as stated in the fourth cross-interrogatory, the bill not having been put in circulation or negotiated by the payee, what time would, under the laws and commercial customs of Norway, be deemed a reasonable time for the presentation for acceptance or payment of such bill by the payee after its receipt by him?

(To this interrogatory the counsel for the defendants objected, upon the same grounds which are urged against the last three questions.

The court overruled the objections, and the answer was read in evidence.

To which ruling and decision the counsel for the defendants duly excepted.)

94 Ans. I repeat that the laws of Norway give no intimation of a reasonable time.

Plaintiff's counsel then offered the 7th cross-interrogatory. Is there a book or treatise on the general jurisprudence of Norway, known as Rolfson's Husret, and, if so, is it considered by lawyers in Norway as a reliable authority upon the subjects of which it treats.

(The defendants' counsel objected to the question on the ground above urged against the other cross-interrogatories.

The court overruled the objections, and the defendants duly excepted.)

Ans. I know that there is such a book, but I have never seen it, nor heard that it has been used by any of my colleagues. It has never been regarded as any authority.

Plaintiff's counsel then offered the eighth cross-interrogatory in evidence, as follows:

8th cross-interrogatory. Under the laws and commercial customs of Norway, is not a larger latitude allowed the holder of a sight bill of exchange drawn in America upon and payable in Norway for
95 the presentation of such bill for acceptance, in case the bill has been put in circulation, than there is in cases where the bill after its receipt by the payee is by him retained in his possession and not negotiated or transferred.

(The defendants' counsel objected to the question on the same grounds as urged against the other cross-interrogatories.

The court overruled the objections and the counsel for the defendants duly excepted.)

Ans. Under the laws of Norway there is in this respect no difference between the bills to which the laws refer.

The plaintiff also introduced evidence tending to show that the draft was purchased of defendants by Anthon Broxrud for the plaintiff and with his money, and that he paid therefor $4,479.73 in currency, and that he sent it by mail to plaintiff in Norway the same day he procured it.

Here the plaintiff rested his case.

96 The counsel for the defendants then moved the court to dismiss the case on the ground that the plaintiff had failed to substantiate or establish his claim or cause of action or right to recover.

Second. That he had shown no notice to the defendants of the dishonor of the bill sued upon, and of which the defendants were the drawers.

The court denied the motion, and the defendants' counsel duly excepted.

The counsel for the defendants then called as a witness RICHARD BRADLEY.

The defendants' counsel then produced and put in evidence the original instrument of protest mentioned in the stipulation hereinbefore set out, the original bill of exchange not being in court, but having been admitted in evidence under the said stipulation by copy.

The witness Bradley then testified that he had been a printer for fifty years. The original certificate of protest was presented to

97 him, and he testified, after examining the same, that the decree which appeared on the same after the signature of the notary, and which purported to be the official seal of the notary, was, in his opinion, printed on the same at the same time the rest of the printed matter in said certificate was printed, and had not been placed there afterwards at any time. On cross-examination this witness testified that the seal referred to was undoubtedly furnished to the printer by the notary or person supplying the rest of the copy, and the whole work done under his direction and by his order.

The defendants' counsel then, after identifying such certificate to be the original by the plaintiff's agent, Mr. Broxrud, and the one received by him from the plaintiff with the original bill of exchange attached thereto, exhibited the same to the court as being the same certificate or instrument of protest referred to in the stipulation of October 22nd, 1877, a copy of which the plaintiff's counsel had been allowed to offer

98 in evidence under said stipulation, and the same which had been marked by the court as Defendants' Exhibit I in this case, and which will be transmitted to the Supreme Court of the United States for inspection under the proper order of this court, with the record in this case.

The defendants' attorneys then gave evidence, by the deposition of the assignee of the firm of Skow, Peterson, Isberg & Co., who testified that the books of Skow, Peterson, Isberg & Co., and transcripts from the books of the Christiania Bank og Kredit Kasse, showed that the firm of Skow, Peterson, Isberg & Co., of Chicago, named in the bill of exchange at the time when the bill in suit was drawn, had funds in the Christiania Bank og Kredit Kasse, being the bank on which the bill

was drawn, more than sufficient to meet said bill, and that said firm, at all times after said bill was drawn, up to the time the said Chris-
99 tiania Bank og Kredit Kasse was notified of their failure by their assignee, to wit, at some time after the 21st of March, 1877, had funds more than sufficient to meet said bill in said Christiania Bank, which the witness testified (under the objections of the plaintiff's counsel, that the same was incompetent, irrelevant, and immaterial, and not the best evidence) appeared from the books and papers of said firm, were placed there for the purpose of paying bills and drafts drawn on said bank by themselves and their correspondents, but there was no evidence given showing, or tending to show, that said deponents had advised Skow, Peterson, Isberg & Co. of the drawing of the bill in suit, or that said latter firm had any knowledge or notice of the drawing of said bill, or directed the Christiania Bank to pay it, or set apart funds for that purpose, or that said bank did set apart any funds for that purpose except as appears in this bill of exceptions.

The defendants' counsel also gave evidence tending to prove
100 that plaintiff had purchased one other bill of exchange only of said defendants prior to the bill in suit, which was drawn through the firm of Skow, Peterson, Isberg & Co., of Chicago, on the said Christiania Bank og Kredit Kasse, which said bill had been paid on presentation; and also that said plaintiff, when living in Red Wing, Minnesota, had been himself engaged in the business of selling exchange on Norway.

CHRISTIAN BROXRUD was then called as a witness by the defendants, and stated that he had been in Norway since the dishonor of the said bill of exchange in suit in this action, and had seen and conversed with the plaintiff.

The defendants' counsel then asked the witness this question:

Ques. Did the plaintiff, in a conversation with you in Norway, in the year 1877, state that he had been guilty of negligence in not sooner presenting the said bill of exchange to the bank for payment?

(The plaintiff's counsel objected to the question as incompetent,
101 irrelevant, and immaterial, and that no foundation had been laid for such evidence by first interrogating said plaintiff on the subject.

The court sustained the objections, and excluded the evidence.

To which ruling and decision the counsel for the defendants duly excepted.)

The defendants here rested.

The plaintiff then called as a witness CHRISTIAN BROXRUD, and proposed to show by him that notice of the dishonor of the bill had been given to the defendants.

The defendants' counsel objected to any such evidence being given or received, on the ground that the same was not in rebuttal.

The court overruled the objection, and the defendants' counsel duly excepted to the ruling and decision.

The witness then testified that he lived in Red Wing in 1877, and had lived there for seven or eight years; that he knew the parties to the suit.

The original protest was then shown to the witness, and he tes-
102 tified that he had seen it before. A translation of the protest was also shown him, being the one in evidence, as stated afore-

said, and he testified that the translation was brought to him by T. K. Simmons, one of said defendants, who said it was made by George Simmons. We compared them, and found them to be correct. This was late in the fall or summer of 1877. The original protest came to me in May, 1877, by mail, attached to the original bill on suit.

The plaintiff's counsel then asked the witness the following question:

Ques. Did you show this protest to Pierce, Simmons & Co.?

(The defendants' counsel objected to the question, on the ground that it is incompetent, irrelevant, and immaterial, and not in rebuttal.

The court overruled the objections, and the defendants' counsel duly excepted to the ruling and decision of the court.)

Ans. I showed it to Pratt, one of the defendants. He said he had received a letter from Indseth that the draft had not been hon-
103 ored, and that the defendants would not pay the bill. I was acting for Indseth. It takes from twenty to thirty days for a letter to come from Norway to Red Wing. I think this was between the first and fifteenth of May. There was no other evidence on the question of notice to the defendants of the dishonor of the bill except as appears in this bill of exceptions.

The plaintiff here rested.

District of Minnesota, United States circuit court.

Stipulation for taking deposition.—Exhibit referred to in bill of exceptions.

OLE A. INDSETH, PLAINTIFF,
vs.
JOSHUA C. PIERCE, THOS. K. SIMMONS, & ALBERT W. PRATT, copartners as Pierce, Simmons & Co., defendants.

104 It is hereby stipulated by and between the parties plaintiff and defendant in the above entitled action that the deposition and testimony of A. G. Bonnevie, residing at Christiania, in the Kingdom of Norway, a witness on behalf of said plaintiff, shall be taken by and before G. Gade, the American consul, residing at said Christiania, whose official character as such consul shall be sufficiently proven by his official seal and an impression thereof affixed to or stamped upon his return hereto; and such consul is hereby agreed upon and appointed to take the deposition of said witness, A. G. Bonnevie.

And the interrogatories and cross-interrogatories, if any, hereto attached shall go out with this stipulation, to be propounded to said witness after said witness is produced and sworn to testify the whole truth, and nothing but the truth, relative to said cause; and said parties hereby waive any and all objections to such consul, and waive
105 the issuing of any commission from said court herein, and hereby agrees that said deposition of said witness A. G. Bonnevie shall have the same force and effect as if taken upon commission duly issued herein; and said parties waive any and all notices and prerequisite forms required by law or rules of court for the taking of depositions; but said parties reserve to themselves the right to object to the competency and admissibility of said interrogatories and cross-interrogatories and to any of the same, and to any of the answers thereto, re-

spectively, in like manner and upon the same grounds as if said witness was present and orally examined in open court upon the trial of this cause which is at issue and in said court depending.

Dated August 24, A. D. 1878.

J. C. McCLURE,
Attorney for Plaintiff.
WILLISTON AND HALL,
Attorneys for Defendants.

106 *Defendants' Exhibit* 1.

1537.

No. 3. [Coat of arms stamp.] One crown, 26 2-5 cts.

Schoyen. { For an amount of over 100 kroner and not over 150 kr. }

1877.

Notary public in Christiania makes hereby known, in the year 1877, April 12, there was delivered to me from Mr. O. A. Indseth, by attorney B. Jerke, a bill of exchange, reading as follows:

Falk Yttor.

"Exchange for 15,441 50-100 kroner.

RED WING, MINNESOTA, *February 1st*, 1877.

At sight of this original of exchange (duplicate unpaid) pay to the order of O. A. Indseth fifteen thousand four hundred and forty-one 50-100 kroner, value received, and charge the same to the ac-
107 count of Sk. P. I. & Co., Chicago, as per advice from them.

PIERCE, SIMMONS & CO.

To CHRISTIANIA BANK OF KREDIT KASSE,
Christiania, Norway.

With the request that the bill of exchange "de non salutione" might be protested.

In accordance with this request, and as there was answered in Christiania Bank of Kredit Kasse that the firm in question had failed, protest was entered on the same day by me, and in presence of P. Eide as witness, as it is hereby protested in optima forma de non salutione, besides which the right of the owner of the bill of exchange to demand and receive from all concerned full restitution for exchange, interest, commission, and all other costs, loss, and damage already caused by such non-payment is reserved, in accordance with the statutes and laws concerning bills of exchange.

In witness of this, this protest of the bill of exchange is issued
108 under my hand and official seal.

N. L. JURGENSEN. [NOTARIAL SEAL.]

Paid 9 kr., nine kroner.

N. L. JURGENSEN.

And because the foregoing matters do not happen of record in said suit, the judge who tried the same having found the same all con-

formable to the truth, has signed and sealed this bill of exceptions this day of April, A. D. 1879.

R. R. NELSON, [L. S.]
Judge.

109 (Indorsed: B. 419, law. Circuit court for the United States, Minnesota. Ole A. Indseth vs. Pierce, Simmons and Co. Bill of exceptions. Filed May 19, 1879. H. E. Mann, clerk. Williston and Hall, Bigelow, Flandrau & Clark, defendants' attorneys.

110 Circuit court of the United States, district of Minnesota.

OLE A. INDSEHT
against
JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, partners under the firm name of Pierce, Simmons & Co.

111 *Statement for judgment and taxation of costs.*

Amount found by court	$85,085 49
Interest thereon from March 31, 1879	57 35
	$85,142 84

Plaintiff's costs and disbursements.

Docket fee	$20 00
Three depositions	7 50
Three affidavits	75
Notary fees—two depositions	27 00
Notary fees for protest	2 43
Fees of clerk of State court	1 25
Sheriff's fees	4 40
Clerk's fees, to be taxed	
Witnesses' fees:	
Anthon Boxford, 3 days, 80 miles	8 50
Christian Boxford, 3 days, 80 miles	8 50
	$80 33

The above costs & disbursements are all right, and may be taxed.
BIGELOW, FLANDRAU & CLARK,
Defendants' Attorneys.

Clerk's fees paid by defendant, June 2, 1879.
H. E. MANN, *Clerk.*

112 DISTRICT OF MINNESOTA,
County of Ramsey, ss:

E. C. PALMER, being sworn, says that he is one of the attorneys for the plaintiff in the foregoing entitled action; that the foregoing bill of costs and disbursements is just and correct, and said disbursements have been necessarily paid or incurred by and on behalf of said plaintiff in said action; that each of said witnesses attended the trial of said

action and testified therein on behalf of said plaintiff; that each said witness resides at Red Wing, in the State of Minnesota, and travelled forty miles in going from said Red Wing to St. Paul, the place of trial, and forty miles in returning, making eighty miles in all, and was in attendance three days as such witness.

E. C. PALMER.

Subscribed & sworn to before me May 26, 1879.

W. P. JEWETT,
Notary Public, Ramsey County, Minnesota.

113 Please take notice that on Wednesday, the 28th day of May, A. D. 1879, at ten o'clock a. m. of that day, said plaintiff will apply to the clerk of said court at his office, in Saint Paul, Minnesota, to have judgment entered in the foregoing action upon the decision rendered therein, and to tax costs and disbursements therein as set forth aforesaid.

E. C. PALMER,
Plaintiff's Attorney.

To BIGELOW, FLANDRAU and CLARK,
Def'ts' Attorneys.

114 (Indorsed:) Circuit court of the United States, district of Minnesota. Ole A. Indseth vs. Pierce, Simmons & Co. Notice of taxation of costs.

115 United States circuit court for the district of Minnesota.

Term minutes, December term, A. D. 1878.

MAY 28, 1879.

Present, hon'ble Rensselaer R. Nelson, judge.

OLE A. INDSETH
vs.
JOSHUA C. PIERCE, THOMAS K. SIMMONS, AND Albert W. Pratt, partners, as Pierce, Simmons and Co.

This cause having been tried before the court without a jury, and the court having rendered its decision on the 31st day of March, A. D. 1879, and on said day entered its order pursuant to said decision that judgment in favor of the plaintiff and against the defendant be
116 entered in this action for the sum of five thousand and eighty-five dollars and forty-nine cents ($5,085.49), and the court then having granted, on motion of the defendants, a stay of proceedings for twenty days, which has now fully expired:

Now the plaintiff, by his attorney, moving for judgment, and the clerk having upon due notice taxed the plaintiff's costs at the sum of $80.33, and also computed and ascertained the interest upon the said sum of $5,085.49 from the date of said decision and order for judgment to be the sum of $57.35, it is by the court considered, ordered, and adjudged that the plaintiff do have and recover of and from the defendants the sum of five thousand one hundred and forty-two dollars and eighty-four cents, being the amount for which judgment was so ordered as aforesaid, with the interest thereon as aforesaid, and that he also do

have and recover from the said defendants the further sum of eighty dollars and thirty-three cents, his costs and charges by him in and about his suit in this behalf expended, so taxed as aforesaid, and
117 that the plaintiff have execution therefor.

Judgment record signed this 28th day of May, A. D. 1879.

H. E. MANN, *Clerk.*

D., $5,142.84; costs, 80.33—$5,223.17.

(Indorsed:) No. 419. B. United States circuit court, district of Minnesota. Ole A. Indseth vs. Joshua C. Pierce et al. Judgment roll. Filed May 28, 1879. H. E. Mann, clerk.

118 Circuit court of the United States for the district of Minnesota.

OLE A. INDSETH
vs
JOSHUA C. PIERCE, THOMAS H. SIMMONS, Albert W. Pratt, copartners as Pierce, Simmons & Co.

Assignment of errors.

And now come the said above-named defendants, by Bigelow, Flandrau & Clark and Williston & Hall, their attorneys, and say that in the record and proceedings in the said court in the said above-entitled action, and also in giving judgment in said action there is manifest error in this, to wit, that when the said plaintiff offered in evidence a copy of the instrument of protest of the said bill of exchange, and the said defendants produced the original thereof, the court should not have allowed said copy to be read in evidence, but should have required said plaintiff to use the said original.

119 There is also error in this: When the plaintiffs offered to read the 8th direct interrogatory of the deposition of the plaintiff Ole A. Indsith, in evidence, the court should have excluded the same and the answer thereto under the objections of the defendants' counsel.

There is also error in this: The court should have excluded the 4th direct interrogatory and the answer thereto in the deposition of the witness Christian Baumann Bonnevie, under the objections of the defendants' counsel.

There is also error in this: The court should have excluded the 6th direct interrogatory in the deposition of the last-named witness, and the answer thereto, under the objection of the defendants' attorneys.

There is also error in this: The court should have excluded the 7th direct interrogatory in the deposition of the said last-named witness, and the answer thereto, under the objections of the defendant's attorneys.

There is also error in this: The court should have excluded
120 the third, fourth, fifth, sixth, seventh, & eighth cross-interrogatories of the deposition of the said witness Bonnevie, and the answers thereto, under the objections of the defendants' attorneys.

There is also error in this: The court should have granted the motion made by the defendants' attorneys to dismiss the said case when the plaintiff rested.

There is also error in this: The court should have allowed the witness Christian Broxrud, to answer the question put to him by the counsel for the defendants concerning the conversation he had with the

plaintiff in Norway on the subject of the presentation of the said bill of exchange to the said bank for payment.

There is also error in this: The court should not have allowed any evidence of notice to the defendant of the dishonor of said bill of exchange after the plaintiff had rested his case. There is also error in this: The court should have excluded the question, and the answer thereto, put to the witness Christian Broxrud, by the plaint-
121 iff's counsel in rebuttal, as to his having shown the original instrument of protest to the defendants, when objected to by the defendants' counsel.

There is also error in this: The court should not have rendered judgment for the plaintiff in said action, as there was no legal proof of the presentation of said bill of exchange for payment or acceptance, or of any refusal to pay or accept the same, or of any notice of the dishonor of said bill to said defendants; but the said court should have given and rendered judgment in said action for said defendants, as it appeared that said plaintiff was guilty of gross negligence in holding said bill, and not presenting the same.

And the said defendants pray that the judgment aforesaid, so rendered against them in this action for the errors aforesaid, and the other many and manifest errors in the said record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by oc-
122 casion of said judgment.

BIGELOW, FLANDRAU & CLARK,
WILLISTON & HALL,
Attorneys for Defendants.

123 (Indorsed:) B. 419. Law. Circuit court U. S. Ole A. Indsith vs. Pierce, Simmons & Co. Assignment of errors. Filed July 10th, 1879. H. E. Mann, clerk. Bigelow, Flandrau & Clark, Williston & Hall, defendants' attorneys.

124 Know all men by these presents that we, Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt, of Red Wing, in the county of Goodhue, and State of Minnesota, as principals, and Eli T. Wilder and Ole K. Simmons, of the same place, as sureties, are held and firmly bound unto Ole A. Indsith in the full sum of eight thousand dollars, to be paid to the said Ole A. Indsith, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of May, 1879.

Whereas lately, at a general term of the circuit court of the United States for the district of Minnesota, begun and holden at the city of Saint Paul, in said district, on the second Monday of December, 1878, and upon the 28th day of May, 1879, in said term, in a suit de-
125 pending in said court between the aforesaid Ole A. Indsith, plaintiff, and the said Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt, copartners as Pierce, Simmons and Co., defendants, judgment was rendered against the said defendants for the sum of five thousand one hundred and forty-two $\frac{84}{00}$ dollars costs, and the said Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt, as such defendants, as aforesaid, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, and a citation directed to said Ole A. Indsith, citing and admonishing him to be and

appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt shall prosecute said writ of error to effect, and answer all damages and
126 costs if they shall fail to make their plea good, then the above obligation to be void, else to remain in full force and vigor.

JOSHUA C. PIERCE. [L. S.]
THOS. K. SIMMONS. [L. S.]
ALBERT W. PRATT. [L. S.]
ELI T. WILDER. [L. S.]
OLE K. SIMMONS. [L. S.]

Sealed and delivered in presence of—
GEORGE P. SJOBLOM.
W. H. PUTNAM.

STATE OF MINNESOTA,
County of Goodhue, ss:

Be it known that on this thirty-first day of May, A. D. 1879, personally came Eli T. Wilder and Ole K. Simmons, the sureties named in the foregoing bond, and, being duly sworn, each for himself did depose and say that he is a resident of and freeholder within the State of Minnesota, and is worth the sum of fifteen thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

ELI T. WILDER.
OLE K. SIMMONS.

Subscribed and sworn to before me this 31st day of May, A. D. 1879.
W. H. PUTNAM,
Notary Public, Minnesota.

127 The foregoing bond and the sureties thereto are approved by me this 3rd day of June, A. D. 1879, and a writ of error allowed in said action.

R. R. NELSON, *Judge.*

(Indorsed:) B. 419. Law. United States circuit court, district of Minnesota. Ole A. Indsith vs. Pierce, Simmons & Co. Bond on writ of error. Filed June 4, 1879. H. E. Mann, clerk.

(Indorsement on cover:) No. 106. Joshua C. Pierce, Thomas K. Simmons, and Albert W. Pratt, copartners, as Pierce, Simmons & Co., plaintiffs in error, vs. Ole A. Indseth. Minnesota C. C. U. S. Filed 18th October, 1879.

168——4

OFFICE SUPREME COURT U.S.
FILED
OCT 31 1882
JAMES H. McKENNEY, CLERK

1-574.

SUPREME COURT of the UNITED STATES.

JOSHUA C. PIERCE, THOMAS K. SIMMONS and ALBERT W. PRATT, co-partners as PIERCE, SIMMONS & CO.,

Plaintiffs in Error,

vs.

OLE A. INDSITH,

Defendant in Error.

BRIEF, POINTS AND AUTHORITIES
of Plaintiffs in Error.

ERROR to CIRCUIT COURT of the UNITED STATES, DIRTRICT of MINNESOTA.

WILLISTON & HALL,
Att'ys for Plaintiffs in Error,
CHAS. E. FLANDRAU,
Of Counsel for Plaintiffs in Error.

Printing Hou-e O. G. Miller, St. Paul.

J. W. Cunningham, Printer, St. Paul, Minn.

SUPREME COURT of the UNITED STATES.

JOSHUA C. PIERCE, THOMAS K. SIMMONS and ALBERT W. PRATT, Co-partners as Pierce, Simmons & Co.

Plaintiffs in Error,

vs.

OLE A. INDSITH,

Defendant in Error.

BRIEF, POINTS AND AUTHORITIES OF PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This is an action brought by the defendant in error, Ole A. Indsith, against the plaintiffs in error, Pierce, Simmons & Co., on a bill of exchange drawn by them in the city of Red Wing, in Minnesota, on the Christiania Bank og Kredit Kasse, of Christiania, Norway, to the order of said Ole A. Indsith, for the sum of fifteen thousand four hundred and forty-one and fifty one-hundredths kroner, which bill was drawn through a firm of

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bankers in Chicago named Skow, Peterson, Isberg & Co., and is in the following words and figures:

"Exchange for 15,441 50-100 kroner, per stamp 2c.

"PIERCE, SIMMONS & Co., BANKERS,
Red Wing, Minn., Feb. 1, 1877.

"At sight of this original of exchange, (duplicate unpaid,) pay "to the order of O. A. Indsith fifteen thousand four hundred and "forty-one and fifty one-hundredths kroner, value received, and "charge the same to account of Sk., P., I. & Co., Chicago. as per "advice from them.

"PIERCE, SIMMONS & Co."

The value of this bill, in our money, is $4,469.35.

The bill was delivered by the drawers to the agent of Insith, who mailed it to him at his home in Eidsvold, Norway, where he received it on or about February 27, 1877. That he kept it in his possession until April 12, 1877, when it is alleged to have been presented for payment, and that payment was refused, and that it was then protested for non-payment, and the drawers notified of its dishonor. The allegations of presentation, demand, refusal, protest, and notice are all put in issue by the defendant's answer.

Upon the trial, plaintiffs attempted to prove the statute law of Norway by parol, and the protest of the bill by a pretended certificate of a person claiming to be a notary public in Christiania, but which certificate was not under the official seal of said notary, and no proof of the authenticity of the certificate, other than the certificate itself was offered.

Several other questions arise in this case, which will be presented in their order in the argument.

The court rendered judgment for the plaintiff for the full

amount of the bill and interest; to which judgment the defendants below bring error.

POINTS.

I.

The court erred in allowing the plaintiff to read in evidence the copy of the certificate of protest, when the original was produced by the defendants in court and tendered to him to be used in evidence.

The question arose in this way: Skow, Peterson, Isberg & Co., through whom the bill was drawn, had failed, (which was the only reason the bill was not paid on presentation,) and bankruptcy proceedings were pending against them in Chicago. It became necessary to send the original bill and protest on to Chicago, in the interest of all parties concerned, and the attorneys accordingly entered into the stipulation found on *page 22 of the record*.

The exigencies of the bankrupt case did not require the bill and protest to remain in Chicago until the trial of this case, and the defendants having received them from the assignee, served on the plaintiff's attorneys the notice found on *pages 22 and 23 of the record*, six days before the trial, recalling the previous stipulation and notifying them that the original would be produced to be used in evidence. The original was produced and tendered on the trial, *page 23, folio 76*. But the court allowed the copy to be read in evidence. If the court acted on this copy in rendering its decision, the judgment should be reversed for error in receiving this incompetent testimony, and if

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it discarded it and acted on the original, then, as we will show, such original was not under the seal of the notary, and was incompetent to prove anything.

II.

It appearing that the plaintiff, who was the payee in the bill, resided within a few hours of the bank on which it was drawn, from the time he received it until the time he claims it was presented for payment, (*See page 24 folio 80,*) to-wit: from the 27th of February to the 12th of April—a period of forty-four days. He must be held to have been guilty of such negligence and delay, as would defeat a recovery by him, should any thing occur in this long interval which would cause the bank not to pay the bill.

Now it appears that Skow, Peterson, Isberg & Co. had funds sufficient to meet the bill in the Christiania Bank up to the 21st of March, 1877, which were placed in said bank to meet drafts and bills drawn on said bank by themselves and their correspondents, *pages 29, 30 folios 98, 99.* So that had the plaintiff presented his bill at the bank at any time before the 21st of March, he would have got his money. He held this bill, therefore, from February 27th to March 21st, while the funds were on hand to meet it—a period of twenty-two days. Now, unless there is something in this case, or in the laws of Norway that will excuse this delay, the plaintiff ought not to recover of the drawer.

The court below seemed to think, that the two letters of February 13th and 15th, written by the defendants to the plaintiff, and as found by the court, received by him on the 13th and 15th of March, afforded some excuse for delay. (*For these letters see page 23, folios 77, 78, 79.*)

The first letter might have given him some cause to fear that provision had not been made in Christiania for his bill, but the second one written two days after and received by him on the 15th of March, distinctly informs him that a cable had been sent to the Christiania Bank just one month before, directing payment of this particular bill. Yet, notwithstanding this notice, he holds the bill twenty-eight days without presenting it. Such laches will and ought to defeat a recovery unless as we said before there is something in the law of Norway to change the rule.

As to what is unreasonable delay in the presentation of a bill of exchange

See 1 Daniels on Negotiable Instruments 355 Section 472.
Amyar vs. Beers, 7 Cow. 705.

This latter case was a bill drawn in New York, December 12th, 1822, on Richmond, Virginia. It was presented for payment January 10th, 1823. It was held in time by reason of the fact that the ill health of the payee prevented an earlier presentment, but the court says: "If no particular circumstances had been stated in this case, I should incline to think there was an unreasonable delay." The court will remember that this case was decided before the days of railroads and telegraphs.

Smith vs. James, 20 Wend. 194.
Strong vs. King, 35 Ill. 9.

In this last case it is declared to be a general rule that the holder of a sight draft, must put it in circulation, or present it for payment at farthest on the next business day after its reception if within reach of the person on whom it is drawn.

This case is approved in *Mantilius vs. Charles, 76 Ill. 303.*
Walsh vs. Dart, 23 Wis. 334.

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In this case the bill was indorsed to the plaintiff January 12th, 1865. He retained it until January 26th, when he sent it by mail to his correspondent in New York, on which place the bill was drawn. The delay was held to be unreasonable, standing unexplained.

Benton vs. Martin, 40 N. Y. 345.

Bill drawn in Olean, New York, on City of New York, drawn July 1st, 1857, but dated July 10th, 1857, presented for payment July 7th, 1857; payment refused on the ground that the bill was not due. Bill not again presented, but was lost. August 10th, 1857, duplicate issued which was presented for payment August 14th, 1857. Held to be unreasonable delay.

We think there is very little doubt that this court will hold that this unreasonable delay of the plaintiff in presenting the bill, worked a discharge of the defendants as drawers of the same, even had the bill been duly protested, and we had notice unless such delay is satisfactorily explained. The only explanation of it seems be the law of Norway, which the plaintiff attempted to prove. We will make a separate point on the question of the admissibility of the proof that was offered to establish this law.

III.

We insist that the law of Norway is not proved. It appears in the testimony of the witness, Bonevie the Norwegian lawyer, that the law he refers to is a written law.

Record page 25, folio 83.

Now the way to prove a foreign statute, is by procuring an authenticated or sworn copy of the same, or by producing the

book in which the law is officially published—nor does the statute of Minnesota cited by the judge below in any way change this rule.

In *Ennis vs. Smith, 14 Howard 251, opinion 266*, this court holds this language.

"The written foreign law may be proved by a copy of the law "properly authenticated * * * * as to the man- "ner of authenticating the law, there is no general rule except "this; that no proof shall be received which pre-supposes better "proof behind, and attainable by the party."

Story on the Conflict of Laws, Section 640 is as follows:

"Generally speaking, authenticated copies of written laws, or "other written publications of a foreign government are expected "to be produced. For it is not to be presumed that any civi- "lized nation will refuse to give such copies, duly authenticated, "which are usual and necessary for the purpose of administer- "ing justice in other countries. It cannot be presumed that an "application to a foreign government to authenticate its own "edict or law will be refused. But the fact of such refusal must, "if relied on, be proved."

Both of these rules were violated in the case at bar. Proof was received of the foreign law which presupposed better proof behind, and attainable by the party—and parol proof was received without proving any refusal by Norway to give an authenticated copy of its law.

The court below seems to rest its admission of this parol proof of a foreign written law on the statute of Minnesota which is as follows.

Record, page 20, folios 68, 69.

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"The existence and the tenor and effect of all foreign laws, "may be proved as facts by parol evidence; but if it appears that "the law in question is contained in a written statute or code, "the court may in its discretion, reject any evidence of such law "that is not accompanied by a copy thereof."

Young's Statutes, 1878, p. 800, section 59.

This law fully recognizes the principle that the best evidence within the power of the party to procure, must be produced; the discretion allowed the court is a legal and not an arbitrary one, and can only be exercised to allow parol proof of a written law, when the party has brought himself within the rule by showing that he cannot procure a copy of the law.

But the witness Bonnevie who testified to the foreign law, does not prove what the law is, except by giving some detached extracts from it, but gives his opinion as to the question of presentment of the bill, by reasoning from analogy, and asserting what he thinks a Norwegian court would hold.

See his testimony on pages 24-9 of the record.

We were entitled to the whole law on the subject, and not the witness' guess work as to what it was and how it should be construed.

1 Greenleaf Ev. Secs. 486, 487, 488.
Packard vs. Hill, 2 Wend. 412.
Chanoine vs. Fowler, 3 Wend 173.
Church vs. Hubbard, 2 Cranch 187, opinion 237.

In this last case this court through Chief Justice Marshal says, *page 237:*

"The principle that the best testimony shall be required which

"the nature of the thing admits of; or in other words, that "no testimony shall be received which presupposes better testi- "mony attainable, by the party who offers it, applies to foreign "laws, as it does to all other facts."

The court below cites several authorities in support of the admission of the parol testimony to prove the foreign law. *Page 21 record, folio 69.* But a careful examination of them does not in our opinion sustain his position, except his citation from Taylor on Evidence, which is purely English doctrine, and has not, that we can discover, been followed in this country. It is useless to multiply authorities on so simple a principle of law as the one under discussion, so we leave this point.

IV.

The court erred in allowing the plaintiff's counsel to read in evidence the cross-interrogatories which had been put to the witness Bonnevie by the defendant from No. 3 to No. 8, inclusive, after the defendant had declined to read them. The plaintiff had no more right to cross-examine his own witness through the instrumentality of a deposition, than he would have had, had the witness been on the stand; and besides this, the answers to these interrogatories were incompetent. *See pages 26–29, record,* where this evidence, together with the objections and exceptions of the defendant will be found.

V.

The court erred in not granting the motion made by the defendants to dismiss the case when the plaintiff rested.

See page 29, folio 96.

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At this point the plaintiff had shown no dishonor of the bill, nor had he shown any notice to the defendants, drawers thereof, of any such dishonor. As these points involve the questions that have been, and will hereafter be discussed more in detail, we will not elaborate this point but rest on a mere statement of it.

VI.

The court erred in excluding the question put to the witness Broxrud on *page 30, folio 100 and 101* as follows:

"*Ques.* Did the plaintiff, in a conversation with you in Nor-"way in the year 1877, state that he had been guilty of negli-"gence in not sooner presenting the said bill to the bank for "payment?"

Whether he having said he was guilty of negligence in not presenting the bill, would have concluded him on that point or not, is immaterial, but as he knew all the facts better than any one else, his views were certainly admissible evidence to aid the court or jury in deciding the question.

VII.

There is no proof of the presentation for payment, demand of payment, refusal to pay, or dishonor or protest of the bill.

To fix the liability of a drawer of a foreign bill of exchange, the same must be protested by a notary.

Story's Conflict of Laws Sec. 631.

2 Daniels on Negotiable Instruments, pp. 1 and 2, Sec. 926.

This author says: "So indispensible is the protest of a "foreign bill in case of its dishonor, that no other evidence will "supply the place of it, and no part of the facts requisite to the "protest can be proved by extraneous testimony, and it has been "said that it is part of the constitution of a foreign bill."

Union Bank vs. Hyde, 6 Peters. 572, opinion 574, where this court says:

"The protest belongs altogether to foreign mercantile transac- "tions, upon which, on the contrary, it is an indispensible inci- "dent to making a drawer of a bill, or indorser of a note liable. "On foreign bills it is the evidence of demand, and an indispens- "ible step towards the legal notice of non-payment, in consequence "of which the undertaking of the drawer or indorser becomes "absolute."

What proof is offered in this case of the demand, refusal and protest of the bill in question? Nothing but a paper purporting to be a notarial certificate of these things having been done. Has this pretended certificate any thing upon or about it that gives it credence and authenticity before a court? Nothing but the *official seal* of the notary can be judicially noticed by a court. It is the seal, and the seal alone, that takes the paper out of the catagory of a mere private certificate, and makes it evidence for any purpose, and we contend that the certificate offered and received by the court below is without any seal at all, and proves nothing.

The court will remember the manner in which, and the circumstances under which the court allowed in evidence a *copy* of the notarial certificate. This whole proceeding on the part of the court below we insist was erroneous, but it in no way weakens the force of our point because the original certificate is before the court, having been put in evidence in the case in order

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to show its character and without objection by the plaintiff, *record, page 29, folio 96*, and is the only instrument that the court below acted upon, and the only one that this court will regard as having any bearing on the case.

Before offering the original certificate in evidence, the defendant's counsel called as a witness *Richard Bradley* an expert printer of fifty years' experience, and he swore "that the device which appeared on the same after the signature of the notary, and which purported to be the official seal of the notary, was in his opinion, printed on the same, at the same time that the rest of the printed matter, and had not been placed there afterwards at any time."

There is no pretense of disproving this fact, and it must stand as established; but it only needs an examination by the court or any one accustomed to printed papers, to fully confirm the statement of the expert witness, and the original document is in this court for inspection.

The undisputed condition of this paper then, is simply this: That when it was printed, with probably thousands of other copies for sale to any notary who needed them, this device was part of it, was printed on it for the purposes merely of indicating the place where the notary's seal should be impressed or attached. It was no more the seal of this particular notary than it was of any other notary who might provide himself with the blanks printed at this printing office. Suppose it had been instead of this device, the letters "L. S." or the word "seal" or the words "put seal here," or any other note of the same import, and a notary had used the blank, and simply signed his name opposite to the device as he did in this case, could that be recognized by a court in another country? Clearly not. It would not be as authentic as if the notary himself had made the design with

his pen, in the shape of a scrawl or a flourish, and such methods have always been decided not to be valid as an official seal.

2 Daniels on Negotiable Instruments Section 947.
Carter vs. Burley. 9 N. H. 558.
Tickner vs. Roberts, 6 Louisiana 13.

The Louisiana case differs somewhat in its facts from the others, but proves the rule we contend for.

Suppose any private citizen had taken one of these blanks and filled it up, signing his name as Mr. Jurgensen did in this case? How is the court to know that he was a notary public, authorized to make the protest and certificate? The seal is the only means, and there is no seal here. This person does not even sign himself as a notary; he simply signs his name; true he says in the attestation clause that it is done under his hand and official seal, but the seal is not there.

What is a seal that a court can take judicial notice of? This court has long ago decided that question, and we venture the assertion that no respectable court has ever gone farther than to recognize an *impression on the paper* as such seal.

The old definition of a seal was, "*cera impressa*," and if the *wax* was not there, there was no seal, no matter what other substance capable of receiving and retaining an impression was used. This strict rule was gradually relaxed, and an impression on any adhesive substance was recognized as a seal. Then, as modern improvements were introduced, and a machine invented with what is called a male and female die, that would impress the device of the sealer on the paper itself, without the intervention of any substance whatever, and in fact produce a more distinct, lasting and indelible impression than any of the previous methods, the courts, keeping pace with the times, accepted this impression on

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the paper itself as a legal seal, but that is as far as they have ever gone in case of an official seal, and we may add that it is quite as far as it is safe to go.

The law merchant in recognizing a seal of a foreign notary, without any further proof of the authenticity of his acts, goes a great way to meet the necessities of trade and commerce. It is done simply as a convenience in aid of commerce, and courts should be careful not to remove the very slight safeguard that now exists to prevent fraud and imposition. We have no doubt that when some method of sealing an official document is invented that will ensure the same safety against deception, that the impression on paper now does, and at the same time afford greater facilities for the transaction of business, the courts will not be slow through the flexibility of the common law, to adopt it. But they will be loth to destroy the very slight evidences of authenticity that now remain to validate these notarial certificates. Without the seal there is nothing but the hand writing of the person executing the paper to prove it. Any one can buy a blank of the kind used in this case, and fill it out and it will be quite as solemn an instrument as the one in question. Any departure from the present rule of requiring the impression of the official seal, should be in the direction of greater formality and safety, and not of relaxation.

This court has expressed it views on this point very tersely and clearly in *Pillow vs. Roberts, 13 Howard, on page 473 of the opinion.* The claim was, that the seal of the Circuit Court of Walworth County in the State of Wisconsin, was insufficient to authenticate an acknowledgement of a deed because it was an impression stamped on paper and not on wax, wafer or other adhesive or tenacious substance.

The court, Grier, Justice, says:

"Formerly, wax was the most convenient and the only ma-"terial used to receive and retain the impression of a seal. Hence "it was said. *Sigillum est cera impressa; quia cera, sine impressione* "*non est sigillum.* But this is not an allegation that an impres-"sion without wax is not a seal, and for this reason courts have "held, that an impression made on wafers or other adhesive sub-"stances capable of receiving an impression, will come within "the definition of '*cera impressa.*' If then wax be construed to be "merely a general term including within it any substance cap-"able of receiving and retaining the impression of a seal, we "cannot perceive why paper, if it have that capacity should not "as well be included in the category. The simple and powerful "machine, now used to impress public seals, does not require "any soft or adhesive substances to receive or retain their im-"pression. The impression made by such a power on paper, is "as well defined, as durable, and less likely to be destroyed or "defaced by vermin, accident or intention than that made on "wax. *It is the seal which authenticates*, and not the substance on "which it is impressed, and where the court can recognize its "identity, they should not be called upon to analyze the material "which exhibits it."

It may be urged that a seal is not essential to the certificate of a notary of the protest of a foreign bill. We may admit this position for this case, but in all such cases the certificate will not prove itself, and it must be shown to have been made by the notary in person, and also that a seal is not necessary by the laws of the country where the certificate is made.

2 Daniels on Negotiable Instruments, page 13, sec. 946.
Carter vs. Burley, 9 N. H. 558.
Chanoine vs. Fowler, 3 Wend. 173.

But there is no such proof in this case. The court below re-

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ceived the certificate on the strength of the pretended seal alone. It does not prove that its maker was a notary at all.

The discussion heretofore on the validity or sufficiency of the seal in question, has proceeded upon the requirements of the common law, and we think we have shown it to be wholly insufficient under that law.

It may however be claimed, that the law of Norway has some bearing upon the question, and some presumption may be invoked in favor of the law of that country, justifying such a scrawl as an official seal. Our answer to any such position is this: That in the absence of proof to the contrary, the laws of all other States and countries are presumed to be the same as the law of the forum, and any one claiming the contrary must prove it.

Leavenworth vs. Brockway, 2 Hill, 201.
Forsyth vs. Baxter, 2 Scammon Ill. p. 9.
Allen vs. Watson, 2 Hill South Carolina, 319, 322.
Brown vs. Gracy, 16 Eng. Com. L. Rep. 426, Note b.
Cooper & Lavely vs. Reaney, 4 Minn. 528.

The law of Minnesota, where this action was tried, on the subject of seals, official, notarial and private, was at the time of said trial, and is now, as follows:

OFFICAL SEAL.

Young's Stats. 1878, p. 71 Sec. 1, Subdivision 13.

"*Thirteenth.* When the seal of a court, public office or cor-"poration is required by law to be affixed to any paper, the "word 'seal' shall include an impression of the official seal made "upon the paper alone, as well as an impression made by means "of a wafer or of wax affixed thereto."

NOTARIAL SEAL.

Young's Stats. '78, page 319, Sec. 3.

"Each notary public before entering upon the duties of his "office shall provide himself with the proper official seal, with "which he shall authenticate his official acts, upon which shall "be engraved the arms of this State, the words 'notarial seal,' "and the name of the county in which he resides."

PRIVATE SEAL.

Young's Stats. '78, pages 538-9, Sec. 31.

"A scroll or device used as a seal upon any deed or convey- "ance, or other instrument whatever, whether intended to be re- "corded or not, shall have the same force and effect as a seal at- "tached thereto, or impressed thereon; but this section shall not "be construed to apply to official seals.''

It will be seen from the above, that this pretended seal cannot draw any support or recognition from the law of the former.

Believing that substantial error was committed on the trial of the case, we ask a reversal of the judgment.

WILLISTON & HALL,
Attorneys for Plaintiffs in Error.
CHAS. E. FLANDRAU,
Of Counsel for Plaintiffs in Error.

J. W. Cunningham, Printer, St. Paul, Minn.

OFFICE SUPREME COURT U.S.
FILED
NOV 10 1882
JAMES H. MCKENNEY

SUPREME COURT

OF THE

UNITED STATES.

16-546

No. 106

OCTOBER TERM, A. D. 1882.

JOSHUA C. PIERCE, THOMAS K. SIMMONS AND ALBERT W. PRATT, CO-PARTNERS AS PIERCE, SIMMONS & CO.,

Plaintiffs in Error.

vs.

OLE A. INDSETH,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

J. W. Cunningham, Printer, St. Paul, Minn.

Supreme Court of the United States.

No. 106.

OCTOBER TERM, A. D. 1882.

JOSHUA C. PIERCE, THOMAS K. SIMMONS AND ALBERT W. PRATT, COPARTNERS AS PIERCE, SIMMONS & CO,
Plaintiffs' in Error,

vs.

OLE A. INDSETH, *Defendant in Error.*

STATEMENT OF FACTS.

Indseth, living in Norway, bought, through an agent, of the Defendants doing business in Red Wing, Minnesota, a bill of exchange, dated February 1, 1879, directing the Christiania Bank, located in Christiania, Norway, at sight, to pay to the order of himself the sum of fifteen thousand four hundred and forty-one and fifty one-hundreths *Kroner*, being $4,469.35—current money of the United States, and charge same to account of S., P., I. & Co., Chicago, as per advice from them. The bill was presented April 12, 1877, and payment refused—and no part thereof has been paid. It was duly protested for non-payment, and due notice thereof given said Defendant at Red Wing, Minnesota.

Action being brought to recover the amount of the bill with interest and damages, the Defendants interpose a merely technical defense, to-wit: That the bill was not presented in time and that no protest or notice was ever given to Defendants of non-payment.

The court will observe that the Defendants have received, used, and still retain the Plaintiff's money—that they do not allege or prove that they ever advised Skow, Peterson, Isberg & Co., of the drawing of the draft, or that the Christiania bank was ever so advised, or that they or anybody ever deposited with said bank any money to the credit of the draft, or that Defendants or Skow, Peterson, Isberg & Co. or the bank have suffered any loss whatever on account of delay. It does not appear that Defendants made any deposit with Skow, Peterson, Isberg & Co., to enable them to make arrangements with the bank in Norway to honor the bill, or that they became liable in any form or to any extent to the Chicago firm in the premises, or that the bank was ever advised by S , P., I & Co. to pay the draft and charge it to them. So that the simple question is, shall the Defendants be permitted to retain and enjoy Plaintiff's money without having paid any consideration whatever and without having suffered any damages or loss whatever therefor, by reason of any thing done or not done by the party whose money they have thus obtained.

POINTS AND AUTHORITIES OF DEFENDANT IN ERROR.

I.

The court below committed no error on the trial or in rendering judgment for the amount of the draft with interest.

A. The exception based upon the reception of the copy of the bill or draft is too frivolous to require notice. The stipulation under which the copy was introduced could not be abrogated in whole or in part at the will of one party on the eve of trial or at all except for fraud or mistake, upon direct application to the court for that purpose And as the original was subsequently put in evidence, the error, if any existed, was cured.

B. The evidence of the Plaintiff that he presented the draft for acceptance, and acceptance was refused was proper.

C. The exceptions relating to the tenor and effect of the laws of Norway, are without merit.

Ennis vs. Smith, 14 *How.*, 400, 426.

2 *Taylor on Evi*, 1231.

Kline vs. Baker, 99 *Mass.*, 253.

The law of Minnesota is found as a fact by the court below, (page 20 of Transcript) and adopted as a rule of evidence applicable to the case. That law expressly declares that "the *existence* and the *tenor* and *effect* of all foreign laws may be proved as facts by parol evidence." This is the *general rule* where that law is regarded as in force. The exception is found in the latter part of the same section, where the court is given discretionary power to reject any evidence of such law that is not accompanied by a copy thereof, when it appears that the law is contained in a written statute or code.

The court *may*, in its discretion, reject any evidence etc. —not that it *must*, but it *may* in a possible contingency.

If the discretionary action of the court below, could be assigned as error in this court, which it cannot, what facts appear in this record which can fairly be urged to show that such action was an abuse of judicial discretion?

The testimony was taken by deposition upon interrogatories and cross-interrogatories sent out by the counsel for the respective parties.

The interrogatories pre-supposed the existence of some Norwegian statute or code, which the witness was expected to prove.

See questions 3, 4, 6, *pages* 24, 25 *Record.*
See also Cross Ints.

Now, when the Defendant's counsel did not see fit to interpose an objection to these questions or their answers, of the character now urged, and which could have been obviated at once before the commission went out, would any court be justified in rejecting parol evidence admissible under the Minnesota statute, when met by such objection on the trial of the action, especially when nothing appeared to cast discredit on the testimony offered?

We think not. Counsel cannot be serious in relying on this exception. Moreover, the only way by which it appears that any written statute or code exists in Norway on the matter in dispute, is found in the questions and answers contained in the deposition, only part of which is set out in the bill of exceptions. For aught that this court can know the whole law statute or code, was set out in the deposition so that the court below had before it, a complete "copy thereof"—and as far as the record does show,

it is evident that the witness gives a copy of the law relating to bills of exchange. It was for the Defendants below to make out a case for the exercise of the discretionary power given in the Minnesota statute, and in this court error will not be presumed but must be clearly shown

D. The objections to the answers to the cross interrogatories were properly overruled. They were responsive and no party should be allowed to exclude a pertinent answer to his own question simply because it does not support his side of the case.

In this instance it is not perceived that such answers prejudiced the defendants.

E. The depositions were taken under stipulation of the parties and if objections existed to them or to any question or answer therein appearing, a motion should have been made in due time to suppress them.

Moreover, good faith as well as good practice requires that merely techanical objections, which if seasonably made could be obviated, should not be considered at a late stage of the case, when no remedy is at hand, except to apply for a continuance or dismiss and commence again.

F. The declaration of plaintiff, if he made one, that he had been negligent in not sooner presenting the bill of exchange, was rightly excluded. The dates and facts were before the court and it was for the judge, not the plaintiff to pass upon the question of negligence. The latter's opinion or admission on the subject was wholly immaterial, as well as incompetent.

G. The admission of evidence after defendants had rested was a matter wholly within the discretion of the court, and cannot be assigned as error.

II.

The presentment of the draft at the place of payment was made in due time. *Record Folios*, 67. 68, 83, 84, 85.

We repeat that this defense as shown in this record is wholly without merit. If the draft had been paid on presentation at the bank in Norway, the defendants would have been liable either to the bank or to Skow Peterson, Isberg & Co., by whose advice it might have been paid. So far as appears, and had it been otherwise, the facts would have been shown, the defendants below have never parted

with the money paid them by plaintiff for the draft, nor did they become liable to pay that convenient Chicago firm such money on account of anything done or not done by any party whatever. It is clear that neither the bank nor the Chicago firm had or could have any claim whatever upon these defendants unless the firm or the bank had paid the draft. The defendants, by taking and keeping plaintiffs money run no risk, and have suffered no damage by reason of the non-payment of their draft It is true that on February 15, 1877, they *wrote* plaintiff, "Fearing that our last large draft might not be paid, owing to loss of our advice, we to-day cause a cable dispatch to be sent to Christiania directing payment, &c."

But there is no proof that this dispatch was ever sent, or if sent, that it was received or acted on, or that it in any way influenced the conduct of the bank, or any one connected with the transaction. On the contrary it is found as a fact in the case that as late as March 21, 1877, no money had been set apart by the Christiania bank to meet this bill.

Record page 20.

We call attention to this fraudulent letter and the facts as found, and the failure of defendants to show loss or damage in the premises, as characteristic of the transaction and as showing the want of merit in this defense.

There are cases in which delay in presentation and consequent non-payment of a draft causes loss to the drawers, but this is not such a case.

It is further to be observed that by the express terms of the draft the bank was not called upon to pay it except "per advice of S. P. I. & Co., Chicago."

The draft was drawn upon a contingency which the drawers took the burden or duty of causing to happen but which as the case shows, they failed to discharge.

Having made a draft not payable except by advice of a party other than themselves or the drawee, and who was not informed of the transaction they cannot raise the question of delay in presentation until they show that such party had been notified of the draft and was expected to advise the Norway bank to make payment and charge to their account.

It is like the case of a promissory note payable at a parti-

cular bank where the maker to exonerate himself must deposit his money in the bank to the credit of the note or if the note is not there must offer to pay, and if sued bring the money into court and prove his said offer.

Wallace vs. McConnell, 13 *Pet.* 135.

III.

All the steps necessary to charge the drawers of the bill were taken and due proof thereof made to the court below.

Bickerdike vs. Bollmen, 1 *Term Rep.* 405.
French vs. Bank of Columbia, 4 *Cranch.* 141.
Robinson vs. Ames, 20 *John*, 146.
Ramsey
~~Ramsey~~ *vs. Sumrall*, 2 *Pet.*, 170, 179.
Nicholls vs. Webb, 8 *Wheat.* 326, 333.
U. S. vs. Wilson, 1 *Bald.* 78, 91.
In re. W. W. Phillips, 14 *Nat. B. Reg.* 219.
U S. vs. Lebby, 1 *W. and M.* 225.
Nailor vs. Bowie, 3 *Md.*, 251.
Bank vs. G. J. R. & D. Co., 100 *Mass.*, 444.

1. Presentation of the bill was unnecessary. Attention is again called to the form of the bill or draft. It is non-negotiable, and only contingently payable by or at the Christiania bank, and the contingency is one with which the payee has nothing whatever to do.

As the case shows that the contingency never happened, and this too by reason of the neglect or fraud of the drawers, we submit that they cannot now be permitted to escape liability had the bill not been presented at all.

2. Delay in presentation under the law of Norway is no defense by the drawer unless he can prove that owing to the delayed presentation he has suffered a loss in his accounts with the drawer. If he cannot prove that he is liable as if having only signed a simple bond.—Record folio 68. Story on bills, Sec. 280

The proof is conclusive on this point also. The drawers never had any funds in or account or credit with the Christiania bank to meet this draft. They relied for its payment, if indeed they can be supposed to have acted in good faith in drawing it, upon their being able to induce S. P. I. & Co. to direct the bank to pay it and charge it to their account. As they never advised S. P. I. & Co. on the subject,

or made any attempt or provision to have it paid, they could not be heard under the Norwegian law to object to delay or want of presentation, but would be liable as upon their simple bond or note.

There is manifest justice in this rule and we cannot suppose that any enlightened court will hesitate to adopt and sanction it.

3. Presentation was made in due time according to the law of the place of payment, which is the law governing the question.

Bond vs. Triplett, 1 *Peters*, 25, 34.

Bowen vs. Newell, 13 *N. Y.*, 290.

There can be no doubt of this upon the facts proved. The law is clearly proved and there is no conflict of evidence. In such case there is no room for presumption.

4. Protest was duly made and fully proved.

The bill of exceptions and the assignments of error appearing in the record are silent as to the particular objection made or intended to be made to the certificate of protest, but from the questions put to the witness Bradley, we infer that it will be claimed that such certificate has no seal. It will be noticed that the defendants below put in evidence the original instrument of protest, and then proceeded to call a witness to prove (if we are right in our conjecture) that it was not sealed. As the instrument was in evidence by defendants without objection and they did not move to exclude it as being unsealed we do not see how they can now properly object that the same was considered by the court as having a seal. The record shows no error or exception on this point But if such question can be raised what are the facts, what is the evidence on the point? The witness testified substantially that in his opinion the device composing the seal was furnished to the printer by the notary and the work of impressing such device or seal upon the paper was done under his direction and by his order.—Record p. 29.

Inspection of the original instrument will sustain this view. This brings the case within the strictest rules now recognized in the courts on the subject of official seals.

Goodyear vs. Hilliher, 2 *Hughes*, 492.

This seal or device is impressed or stamped upon the paper in such manner as to cause it to become part of the paper itself The device or type is a dye capable of mak-

ing an indentation or impression upon and in the substance or fibre of the paper. That such device or die had ink upon it did not prevent it being impressed upon or driven into the paper or render it illegible. On the contrary it aided the impression and made it intelligible and as enduable as the paper itself. The impression cannot be destroyed without destroying the paper itself. We therefore insist that as matter of fact there is a seal, clearly intelligible, official and duly impressed. Aside from what defendants' own witness states, the notary certifies that it is his official seal, and the device itself is of like import. Whether it was impressed upon the instrument by the notary's own hand or under his direction, or at one time or another is immaterial. Courts will not go into such matters of detail. The point is, did the notary publish this instrument as his official act and as having upon it this particular device as his official seal. This court will not hold, we apprehend, that it was the judicial duty of the court below to determine whether this foreign notary ought to have had and used a different device, or a die impressed upon wax or parchment or paper, or covered with black ink, or red ink, or without any ink at all, joined to the instrument by paste or mucilage, or any particular adhesive substance. If it is there, bearing or possessing an official character, presenting an official appearance as distinguished from a mere private scroll of a person not claiming to be an officer, and so connected with or joined to or stamped upon or made a part of the paper by impression or in any legible permanent shape, it is enough. To adopt or sanction a narrow rule, exclusive of customary devices, would, especially in regard to foreign bills, tend to destroy their value and operate as a serious restriction upon a large and rapidly increasing class of business.

IV.

The judgment should be affirmed with ten per cent. damages.

Barrow vs. Hill, 13 *How.*. 54.
Sutton vs. Bancroft, 23 *How.* 320.
Jenkins vs. Banning, 23 *How.* 455.
Prentice vs. Peckersgill, 6 *Wall.*, 511.
Campell vs. Wilcox, 10 *Wall.*, 421.

E. C. PALMER,
Counsel for Defendant In Error.

SKETCH MAP
SHOWING THE
UTICA, ITHACA & ELMIRA RAILROAD,
& CONNECTIONS

LAKE ONTARIO
CANADA
LAKE ERIE
HAMILTON
ST CATHERINES
NIAGARA
LOCKPORT
ERIE CANAL
WELLAND CANAL
NEW YORK CENTRAL R.R.
BUFFALO
BATAVIA R.R.
N.Y. CENTRAL
ROCHESTER
N.Y. CENTRAL RAILROAD
LYONS
ERIE CANAL
OSWEGO
FAIR HAVEN
SYRACUSE
N.Y. CENTRAL R.R.
AUBURN
CANANDAIGUA
GENEVA
PENNYAN
CAYUGA & SENECA CANAL
CAYUGA & SUSQUEHANNA R.R.
SOUTHERN CENTRAL R.R.
ELMIRA & CORTLAND R.R.
CORTLAND
ITHACA
WATKINS
NORTHERN CENTRAL R.R.
UTICA, ITHACA & ELMIRA R.R.
VAN ETTENVILLE
OWEGO
CORNING
ELMIRA
ELKLAND
BLOSSBURG & CORNING R.R.
ATHENS
TOWANDA
WELLSBORO
BLOSSBURG
BARCLAY
KETTY
NORTHERN CENTRAL R.R.
BITUMINOUS COAL FIELDS
WILLIAMSPORT
LOCKHAVEN
PENNSYLVANIA R.R.
TO PITTSBURG
DANVILLE
TO PHILADELPHIA & BALTIMORE
NORTHERN CENTRAL R.R.
SHAMOKIN COAL FIELD
SCHUYLKILL COAL
ANTHRACITE COAL FIELDS
LEHIGH COAL
MAUCH CHUNK
LEHIGH VALLEY R.R.
PHILADELPHIA & READING R.R.
ALLENTOWN
TUNCHANNOCK
LEHIGH VALLEY R.R.
DELAWARE LACKAWANNA & WESTERN R.R.
WILKESBARRE
SUSQUEHANNA
DELAWARE & HUDSON R.R.
DELAWARE RIVER
MILFORD
DELAWARE RIVER
COSHEN
ERIE R.R.
BINGHAMTON
SIDNEY PLAINS
NORWICH
N.Y. & OSWEGO
DE RUYTER
SMITH'S VALLEY
ONEIDA
CAZENOVIA
ONEIDA LAKE
ROME
PULASKI
OSWEGO & SYRACUSE R.R.
SYRACUSE NORTHERN R.R.
ROME WATERTOWN R.R.
TO CANADA MONTREAL QUEBEC
UTICA & BLACK RIVER R.R.
UTICA
UTICA BRANCH OF MIDLAND R.R.
NEW YORK CENTRAL & HUDSON RIVER R.R.
HERKIMER
LITTLE FALLS
FORT PLAIN
FONDA
AMSTERDAM
CLOVERSVILLE
SCHENECTADY
ALBANY
TROY
TROY & BOSTON R.R.
RENSSELAER & SARATOGA R.R.
SARATOGA SPRINGS
TO MONTREAL
ALBANY & SUSQUEHANNA R.R.
BOSTON & ALBANY R.R.
VERMONT
MASSACHUSETTS
CONNECTICUT
NEW YORK & OSWEGO MIDLAND RAIL ROAD
NEW YORK CENTRAL & HUDSON RIVER R.R.
PATERSON
NEW JERSEY
EASTON
JERSEY CITY
NEW YORK
SOMERVILLE
CENTRAL OF N.J.
STATEN ISLAND
LONG ISLAND
DUNKIRK
LAKE SHORE R.R.
BUFFALO & WASHINGTON R.R.
BUFFALO & ERIE R.R.
ROCHESTER BRANCH OF ERIE R.R.
HORNELLSVILLE
ERIE R.R.
BUFFALO CORRIE & PITTSBURG
ERIE
TO CHICAGO Cincinnati &c.
SALAMANCA
OLEAN
BELMONT
WABREN
PHILADELPHIA & ERIE R.R.
RIDGWAY
EMPORIUM
OIL CITY
PENNSYLVANIA OIL REGION
PENNSYLVANIA
NEW YORK

JOHN R. MOFFITT

Heel-Stiffeners for Boots and Shoes.

No. 127,090. Patented May 21, 1872.

Fig. 1.

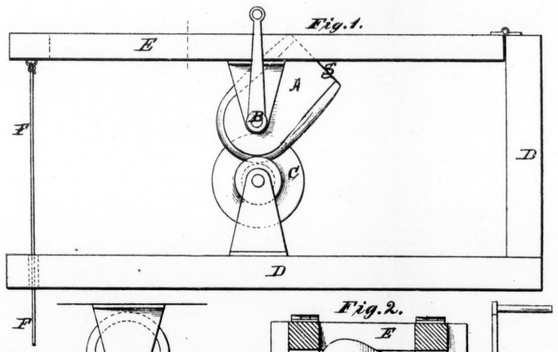


Fig. 3.

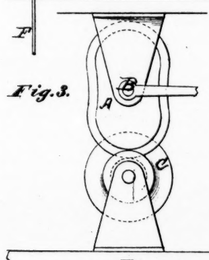


Fig. 2.

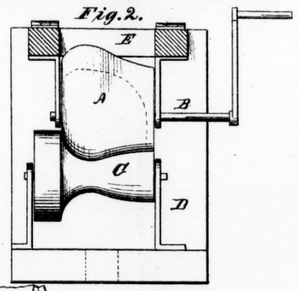
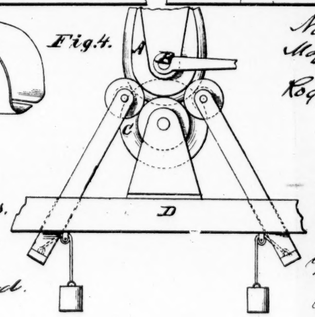


Fig. 5.

Fig. 4.



No. 291 Moffitt v. Rogers } Pages 1876

Witnesses.
J. R. Young
H. Bradford.

Inventor:
John R. Moffitt.
by his Atty
John J. Halsted.

2 Sheets--Sheet 1.

J. R. MOFFITT.

Manufacture of Heel-Stiffeners for Boots and Shoes.

No. 6,162. Reissued Dec. 8, 1874.

Fig 1.

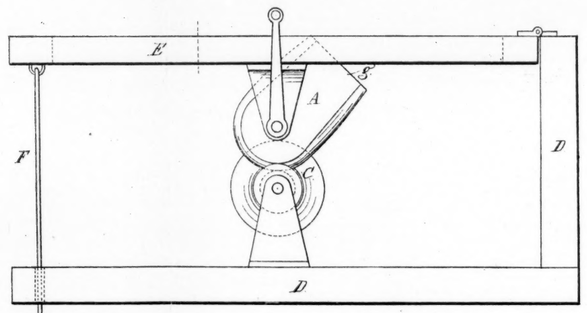


Fig 2

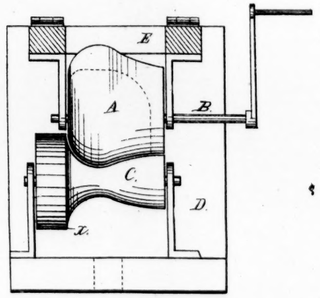
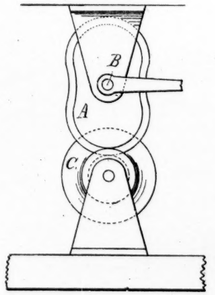


Fig 3.



No. 29 Moffitt v. Rogers } Pages 189. 190.

Witnesses
Geo P Smallwood Jr
John Roby

Inventor.
J. R. Moffitt

2 Sheets--Sheet 2.

J. R. MOFFITT.

Manufacture of Heel-Stiffeners for Boots and Shoes.

No. 6,162. Reissued Dec. 8, 1874.

Fig. 4

No. 291 Moffitt v. Rogers } pages 1914.

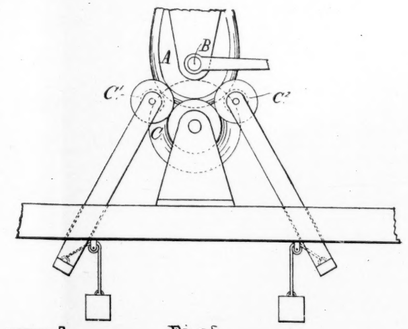


Fig 5

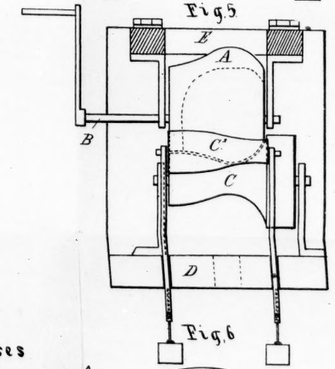
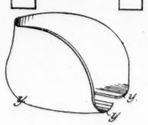


Fig 6



Witnesses
Geo P Smallwood Jr
John Roby.

Inventor
J. R. Moffitt

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L. COTE.

Machines for Forming Boot and Shoe Stiffeners.

No. 5,896. Reissued June 2, 1874.

Fig. 1.

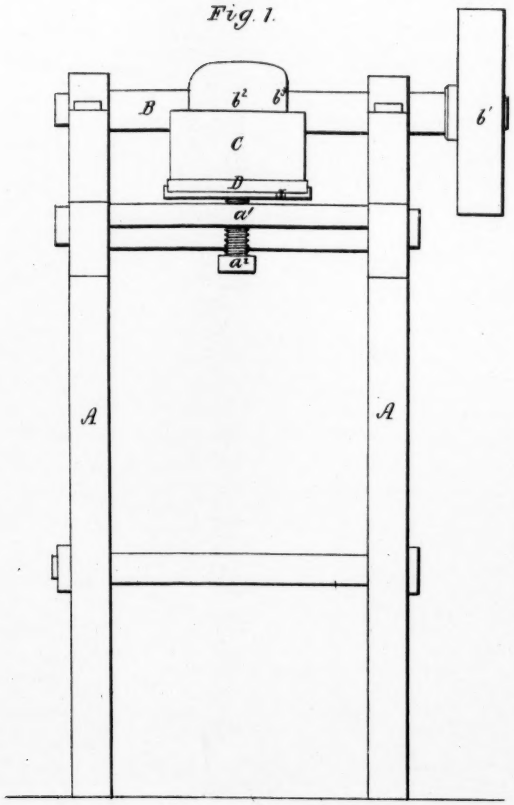

Fig. 2.

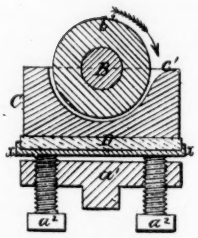

Fig. 3.

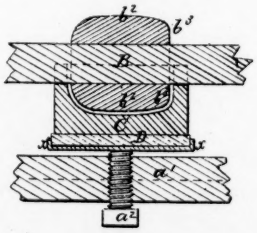

Fig. 4.

No. 291 Moffitt } pages 195 & 6.
Rogers }

Witnesses
S. N. Piper
L. N. Bolles

Louis Cote'
by his attorney
R. H. Eddy

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L. COTÉ.

MACHINERY FOR FORMING STIFFENERS FOR BOOTS AND SHOES.

No. 7,356. Reissued Oct. 24, 1876.

No. 291
Moffitt
v.
Rogers
} page 198.

Fig. 1.

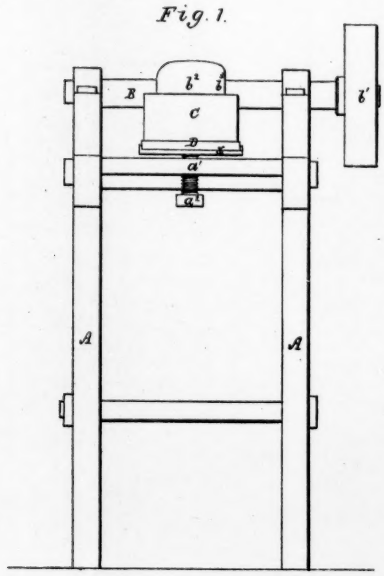

Fig. 2.

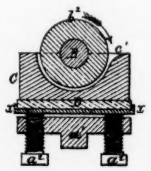

Fig. 3.

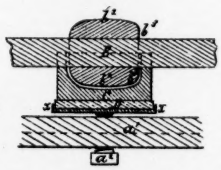

Fig. 4.

Witnesses
S. N. Piper
L. A. Miller

Louis Coté
by his attorney.
R. H. Eddy